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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-748

AMERICAN RADIO ASSOCIATION, AFL-CIO, *et al.*,
Petitioners,

v.

MOBILE STEAMSHIP ASSOCIATION, INC.
and ROBERT E. MALONE,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

Petitioners, American Radio Association, AFL-CIO, International Organization of Masters, Mates and Pilots, AFL-CIO, National Marine Engineers Beneficial Association, AFL-CIO, National Maritime Union of America, AFL-CIO, Radio Officers Union of the United Telegraph Workers, AFL-CIO, Seafarers International Union of North America, AFL-CIO, Price L. Mitchell, Charles D. Mallory, Layton Overstreet and Louis Neira, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Alabama entered on May 3, 1973.

Opinions Below

The opinion of the Supreme Court of Alabama, dated May 3, 1973, affirming the granting of a temporary injunction by the Circuit Court of Mobile County, Alabama, is set forth at pages 5a-26a of Appendix C and is reported at 279 So. 2d 467.

The denial by the Supreme Court of Alabama, dated July 5, 1973, of the application for rehearing, which was entered without opinion, is set forth at page 27a of Appendix D.

The order for injunction of the Circuit Court of Mobile County, Alabama, dated November 11, 1971, is set forth at pages 28a-30a of Appendix E; that court issued no opinion, finding of fact or conclusion of law.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

The order of the Supreme Court of Alabama issued and was entered on May 3, 1973 (Appendix C, pages 5a-26a). An application for a rehearing was denied on July 5, 1973 (Appendix D, page 27a). Petitioners' application for an extension of time in which to file the present petition for a writ of certiorari was granted by Mr. Justice Powell, Jr. by order dated September 18, 1973, which order extended the time for filing of this petition to and including November 9, 1973.

Questions Presented

The state court injunction prohibited peaceful primary informational picketing of foreign flag vessels in the Port of Mobile. The picketing, in the nature of a "Buy American" campaign, protested the loss of jobs of American seamen to foreign flag vessels paying substandard wages and benefits. The picketing was conducted by a group of American maritime unions which did not seek to represent, organize or support the crews of the foreign flag vessels. Some American workers voluntarily refused to cross the picket line. The complainants were an association comprising local stevedoring companies and shipping companies in the Port of Mobile and a local farmer whose produce was shipped through that port. The injunction was issued without any opinion, finding of fact or conclusion of law. The questions thus presented are:

1. Whether the state court is without jurisdiction to adjudicate the controversy because the protection accorded and the restraint imposed on peaceful picketing in the context of a labor dispute is within the exclusive regulatory scope of the National Labor Relations Act and therefore within the sole competence of the National Labor Relations Board.

2. Whether the prohibition of peaceful informational picketing abridges freedom of speech in violation of the First Amendment as it is incorporated by the Fourteenth Amendment of the United States Constitution.

Statute Involved

Petitioners contend that their peaceful informational picketing was protected by §7 of the National Labor Relations Act, 29 U.S.C. §157, as "concerted activities for the purpose of * * * mutual aid or protection * * *" or, if not so protected, then prohibited or arguably prohibited by §8 of that Act, 29 U.S.C. §158(b)(4), and in either event that the statute wholly preempts state judicial regulation of the picketing. The pertinent provisions of the National Labor Relations Act are set forth at pages 1a-3a of Appendix A.

Constitutional Provisions Involved

Petitioners contend that peaceful informational picketing was an exercise of freedom of speech protected by the First Amendment as it is incorporated in the Fourteenth Amendment of the Constitution and consequently not subject to any abridgment. The Constitutional provisions are set forth at page 4a of Appendix B.

Statement of the Case

The Parties

The union petitioners are members of the Committee of American Maritime Unions which consists of American unions representing American seamen on American flag vessels; the individual petitioners are members of the union petitioners; the individuals participated in the picketing under instructions from the Committee of American Maritime Unions at the Port of Mobile in November

of 1971. That picketing was undertaken by the Committee on a selective nationwide basis to protest the enormous loss of jobs of American seamen to foreign flag vessels paying substandard wages and benefits in contrast to those paid to American seamen (92a-95a).

Identical selective picketing by the same unions using identical picket signs and distributing identical leaflets is now before this Court pending argument in *Windward Shipping (London) Limited, et al., Petitioners,* v. *American Radio Association, AFL-CIO, et al., Respondents,* No. 72-1061, bringing up for review the decision of the Texas court in 482 S.W. 2d 675, holding that the subject matter was pre-empted by the National Labor Relations Act. Identical selective picketing by the same unions using identical picket signs and distributing identical leaflets was before this Court in *Port of Houston Authority, etc.* v. *International Organization of Masters, Mates, etc., et al.,* 456 F. 2d 50 (5 Cir. 1972), cert. den. 409 U.S. 894 (1972) wherein the Fifth Circuit held that restraint of the picketing there was prohibited by the Norris-LaGuardia Act.

The respondent Association is comprised of local employers; the individual respondent is a local farmer.*

The Nature, Consequence and Purpose of the Picketing

At the time of the injunction hearing in the Circuit Court of Mobile County, petitioners were peacefully picketing two foreign flag vessels with picket signs (6a)

* In *Port of Houston Authority, supra,* the unsuccessful plaintiff was also an association of local employers of longshoremen. In *Windward Shipping, supra,* the unsuccessful plaintiffs were owners, operators or agents of foreign flag vessels.

and were distributing leaflets (7a) advising of the loss of jobs of American seamen, requesting the public not to patronize the foreign flag vessels, and requesting the public to patronize American flag vessels. The picket sign was as follows:

"ATTENTION TO THE PUBLIC

"The wages and benefits paid aboard the vessel SS Aqua Gloria and the SS Bel Hudson are substandard to those of the American seamen. This results in extreme damage to our wage standard and the loss of our jobs.

"Please do not patronize these vessels. Help the American seamen.

"We have no dispute with other vessels at this site."

The names of the picketing unions appeared beneath the quoted matter.

The leaflet distributed was as follows:

"TO THE PUBLIC

"American Seamen have lost approximately 50% of their jobs in the past few years to foreign flag ships employing seamen at a fraction of the wages of American Seamen.

"American dollars flowing to these foreign ship owners operating ships at wages and benefits substandard to American Seamen, are hurting our balance of payments in addition to hurting our economy by the loss of jobs.

"A strong American Merchant Marine is essential to our national defense. The fewer American flag ships there are, the weaker our position will be in a period of national emergency.

"PLEASE PATRONIZE AMERICAN FLAG VESSELS, SAVE OUR JOBS, HELP OUR ECONOMY AND SUPPORT OUR NATIONAL DEFENSE BY HELPING TO CREATE A STRONG AMERICAN MERCHANT MARINE.

"Our dispute here is limited to the vessel picket at this site, the SS ".

The names of the unions again appeared at the bottom of the leaflets. The name of the vessel was inserted in the blank space.

The picketing was peaceful, taking place inside the State Docks by permission (96a) after the picketing had commenced at the gates. Some waterfront employees crossed the picket line and some refused to cross the picket line (96a, 116a, 123a). It is undisputed that there was no mass picketing, no blocking of ingress or egress, no assaults, no coercion, no threats, and no shouting (8a, 96a). The only act complained of, except for the peaceful informational picketing, was that the unions "have also directed employees of other employers * * * to refuse to provide any work or services with respect to such vessels." (37a—¶19 of Association complaint). It is uncontroverted, however, that the only things "directed" at any employee of the stevedoring companies were the picket signs and leaflets distributed by mute pickets (8a, 143a, 144a).

The picketing was "low profile". At the time of the hearing only two foreign flag vessels were being picketed by four or five pickets. To the gratification of the pickets, cargo operations on the two vessels ceased because some American longshoremen refused to cross a picket line of American seamen protesting the loss of American jobs.

The purpose of the picketing was as stated on the picket signs and on the leaflets distributed by the mute pickets.

The trial court did not find that the picketing was conducted by any unlawful method or for any unlawful purpose. The Supreme Court of Alabama nevertheless held that the purpose of the picketing was unlawful because the unions hoped that the picket lines would be honored by American workers (and one union member, Neira, expressed a similar hope with considerable enthusiasm from the witness stand, although not on the picket line), and that the honoring of the picket line would and did result in damage to the complainants, which was anticipated by petitioners.

The Litigation and the Manner in Which the Federal Question Was Raised

Petitioners first sought to raise a federal question by removal to the United States District Court for the Southern District of Alabama, Southern District (Certified Transcript, pages 9-11). The petition for removal stated that the complaint in the state court action alleged a secondary boycott comprehended by §303 of the Taft-Hartley Act, 29 U.S.C. §187, a provision allowing an independent action for damages for acts which were denominated unfair labor practices under §8(b)(4) of the National Labor Relations Act, 29 U.S.C. §158(b)(4). That attempt to raise the federal question was aborted by the order granting remand (Certified Transcript, page 13).

Thereafter, petitioners raised the federal question of preemption, that the picketing was either protected or prohibited or arguably prohibited by the National Labor Relations Act, and that the relief sought forbade the exercise of the federal right to engage in concerted activities for mutual aid or protection. Additionally, petitioners

raised the question that the relief sought would prohibit peaceful informational picketing in violation of the First Amendment as incorporated in the Fourteenth Amendment. Those questions were raised in the demurrer (52a); the pleas (53a, 54a); and the answer (55a, 56a). And those questions were raised on appeal to the Supreme Court of Alabama in the assignment of errors (57a, 58a).

The order for injunction of the District Court of Mobile County (28a-30a) restrained "interference" and picketing at or near premises owned, occupied or used by members of the respondent Association. For all practical purposes, the area covered by the injunction included the entire Port of Mobile and included the picketing of any vessel flying any flag. The injunctive order of November 11, 1971, was issued without any accompanying opinion or finding of fact or conclusion of law. On appeal to the Supreme Court of Alabama, that court made valiant attempt to salvage the injunction by stating:

> "The trial judge's decree, granting the writ of temporary injunction, made no finding of fact from the evidence. But *apparently* the trial judge found from the evidence that there was wrongful interference by the appellants with the appellees' business, *for otherwise, he would not have ordered the writ of temporary injunction to issue.*" (20a, 21a, emphasis supplied)

The Alabama Supreme Court held that there was no preemption because the National Labor Relations Act was inapplicable, reasoning that the picketing constituted an interference with the internal economy of the foreign flag vessels; reliance was upon the trilogy of cases of this Court, *Benz, Incres* and *McCulloch,* discussed *infra.* It also

held that, since there was a hope by the unions that longshoremen would not cross the picket line at the foreign flag vessels, and because this hope was realized, there was a tortious interference with the business of the stevedoring companies and the farmer.

Reasons for Granting the Writ

The Supreme Court of Alabama has disregarded or misconstrued controlling decisions of this Court on the question of whether or not picketing of a foreign flag vessel in an American port by American unions which do not seek to organize, represent or support the crews of the foreign flag vessels, constitutes an interference with the internal economy of the foreign vessel.

It was upon the Alabama court's determination that such picketing did interfere with the internal economy that it decided the question of preemption, holding the National Labor Relations Act wholly inapplicable, citing *Benz* v. *Compania Naviera Hidalgo*, 353 U. S. 138 (1957), *Incres Steamship Co.* v. *International Maritime Workers Union*, 372 U. S. 24 (1963), and *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U. S. 10 (1963). The Alabama court overlooked, however, the fact that this Court has twice held that there is no interference with the internal economy of a foreign flag vessel when the picketing union does not seek representation of or lend support to the crew of the foreign flag vessel. *International Longshoremen's Association, Local 1416, AFL-CIO* v. *Ariadne Shipping Co., Ltd.*, 397 U.S. 195 (1970) and *Marine Cooks and Stewards Union* v. *Panama S.S. Co.*, 362 U.S. 365 (1960).

Absent the "red herring" of internal economy, the teaching of *Garner* v. *Teamsters, Chauffeurs and Helpers Local Union No. 776*, 346 U.S. 485 (1953) and *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959) is inescapable. The acts complained of are either protected or arguably prohibited by the National Labor Relations Act. No other court or agency, state or federal, has jurisdiction of the subject matter.

The decision of the Alabama court is also in conflict on the question of preemption with the decision of the Texas court in *Windward Shipping, etc., et al.* v. *American Radio Association, et al., supra*, now pending argument in this Court.

We suggest that the Alabama Supreme Court erred grievously in holding that the picketing was not constitutionally protected freedom of speech, overlooking or misconstruing the line of cases beginning with *Thornhill* v. *Alabama*, 310 U.S. 88 (1940). The escape from that authority was through the avenue of what we somewhat facetiously refer to as a new cause of action discovered in Alabama which may be denominated the "Tortious Hope". The Alabama court has reasoned that because peaceful primary informational picketing is effective, *i.e.*, American longshoremen refuse to cross a picket line of American seamen protesting loss of their jobs, and because the picketing unions hope that the picketing will be effective, and because stevedoring companies or farmers are injured in their business as a result, the picketing has somehow become unlawful. We suggest that the maxim *damnum absque injuria* is surely applicable. Otherwise, any effective peaceful picketing is *per se* unlawful. The result is an absurdity.

ARGUMENT

I

The National Labor Relations Act preempts state jurisdiction to enjoin peaceful nonobstructive primary informational picketing of a foreign flag vessel in the United States by American seamen truthfully protesting the adverse effects of substandard wages and benefits paid by the foreign flag vessel on th domestic employment opportunities of American s amen and concurrently requesting the public not to patronize such vessel.

The issue of preemption has been muddied by the injection of the contention that the object of the picketing was to interfere with the internal economy of the foreign flag vessels. That contention is a late starter, never having been pleaded as an unlawful objective. The only unlawful objective pleaded was the interference in the contractual relations between the stevedoring companies and the foreign flag vessels and thus the alleged interference with the rights of those companies to carry on a lawful business (37a—¶¶20 and 21 of Association complaint). But since the Supreme Court of Alabama has rested its holding on preemption on the ground of interference with the internal economy of the vessels, we turn to that issue.

The trilogy of *Benz, Incres* and *McCulloch,* all *supra,* stands for the proposition that the National Labor Relations Act is inapplicable when American unions seek to organize, represent or support the foreign crews aboard the foreign vessels. Such conduct interferes with the in-

ternal economy of the vessel—the employer-employee relationship between the owner or operator of the foreign flag vessel and the foreign crew. The Act was never intended to encompass that employer-employee relationship. On the other hand, *Marine Cooks and Stewards* and *Ariadne*, both *supra*, instruct that when the picketing of American unions is to preserve their job opportunities here in the United States, such conduct is not an interference with the internal economy of the foreign flag vessel; and *Ariadne* pointedly holds that such conduct by American unions is activity protected by §7. Petitioners relied below upon *Marine Cooks and Stewards* and *Ariadne*, but neither case was adverted to in the opinion of the Alabama Supreme Court.

At bar, the conduct was solely to preserve job opportunities here in the United States—conduct not directed to internal economy. It follows, then, that the issue of internal economy of the foreign flag vessels must be removed from this case; and the doctrine of preemption controls. We first address preemption under §8 of the Act.

The National Labor Relations Board has exercised its jurisdiction and implemented the provisions of the Act where the unlawful conduct has occurred within our nation, notwithstanding the fact that the primary employer and its employees were foreign. *Washington-Oregon Shingle Weavers' Council (Sound Shingle Co.)*, 101 NLRB 1159 (1952) and *International Wood Workers of America (T. Smith & Sons, Inc.)*, 125 NLRB 209 (1959). See also *Madden* v. *Grain Elevator Workers Local 418*, 334 F. 2d 1014 (7 Cir. 1964), cert. den. 379 U.S. 967 and *Grain Elevator Workers Local 418* v. *NLRB*, 376 F. 2d 774 (D. C. Cir. 1967), cert. den. 389 U. S. 932; and the doctrine of preemption is

applicable whether or not there is a proximate employer-employee relationship, *Hotel Employees Union* v. *Sax Enterprises,* 358 U.S. 270 (1959); *Retail Clerks Local 560* v. *J. J. Newberry Co.,* 352 U.S. 987 (1957) and *Pocatello Building & Construction Trades Council* v. *C.H. Elle Const. Co.,* 352 U. S. 884 (1956). Congress has occupied the field of secondary picketing in commerce; Alabama may not trench upon the field.

As to §7 of the Act, it is now hornbook law that peaceful picketing for the purpose of mutual aid or protection is immune from state regulation. *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 245, 246; *Garner* v. *Teamsters, Chauffeurs and Helpers Local Union No. 776,* 346 U. S. 485, 494. Apposite is the statement in that case that

> "* * * it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal act prohibits." (346 U.S. at 500).

Accord: *United Mine Workers* v. *Arkansas Oak Flooring Co.,* 351 U.S. 62, 75 (1956); *Weber* v. *Anheuser-Busch, Inc.,* 348 U. S. 468, 474 (1955).

Finally, this Court in *Ariadne* foreclosed state regulation of picketing of a foreign flag vessel by American workers who protest substandard wages paid by the foreign flag vessel.

> "The jurisdiction of the National Labor Relations Board is exclusive and pre-emptive as to activities that

> are 'arguably subject' to regulation under §7 or §8 of the Act. * * * The activities of petitioner in this case met that test. The union's peaceful primary picketing to protest wage rates below established area standards arguably constituted protected activity under §7." (397 U.S. at 200, 201).

The concurring opinion of Mr. Justice White in *Ariadne* highlights our contentions here. That opinion stated that the unions job preservation picketing was clearly not proscribed by §8 of the Act and "that the peaceful and nonobstructive picketing on the public docks near the ships was union activity protected under the National Labor Relations Act" (397 U.S. at 202). Thus, we need not be concerned with whether the picketing in the instant case was "arguably" protected; it was absolutely protected by the Act.

Clearly, picketing by petitioners in the instant case was not subject to state regulation. The jurisdiction of the Board is exclusive.

II

Peaceful primary informational picketing to protest the loss of domestic jobs to foreign flag vessels paying substandard wages and benefits was an exercise of constitutionally protected freedom of speech and should not have been enjoined by the Alabama Court.

Peaceful primary informational picketing, whether banned by state statute, municipal ordinance or, as in the instant case, by state court injunction, is protected by the First and Fourteenth Amendments as an aspect of freedom of speech. Such picketing does not lose its protection be-

cause it is exercised at the situs of the dispute, or because the pickets have no employment relationship with the party picketed, or because the pickets effectively persuade others not to patronize the picketing party, or because the picketing incidentally results in an interference with the carrying on of a business, either that of the party picketed or secondary or tertiary parties.

Picketing may be regulated by the state, sometimes banned completely, if its methods are not peaceful or if its purposes or objectives are not lawful. If the latter, however, the state must specifically identify the type of anti-social conduct it seeks to limit or prohibit. In the instant case, the trial court, having made no findings of fact or conclusions of law, has left us in the dark as to the conduct which it believed to have been anti-social.

The picketing of the foreign flag vessels was peaceful and was, therefore, constitutionally protected as an exercise of free speech. *Thornhill* v. *Alabama,* 310 U. S. 88, 102-104 (1940); *Carlson* v. *California,* 310 U. S. 106, 112, 113 (1940). Said the court in *Carlson*:

> "For the reasons set forth in the opinion in Thornhill v. Alabama, supra, publicizing the facts in a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgment by a state." (310 U.S. at 113).

Recent reaffirmations of *Thornhill* are *Amalgamated Food Employees* v. *Logan Valley Plaza,* 391 U. S. 308, 313

(1968) and *Police Department of Chicago* v. *Mosley*, 408 U. S. 92 (1972).

It was again argued in *Thornhill* that the Alabama statute could be saved because its ban on picketing was limited to the situs of the dispute. The argument received short judicial shrift (310 U.S. at 105, 106).

The fact that petitioners were not employees of the foreign flag vessels to which their primary picketing was directed cannot result in their loss of their freedom of speech. A state court may not find an unlawful purpose because there is no employment relationship and thus, in its view, no labor dispute. *American Federation of Labor* v. *Swing*, 312 U.S. 321 (1941); *Bakery Drivers Union* v. *Wohl*, 315 U. S. 769 (1942). This aspect of the matter was finally put to rest in *Cafeteria Employees* v. *Angelos*, 320 U.S. 293, 295-296 (1943); this line of cases was cited with approbation in *Logan Valley Plaza*, 391 U.S. at 314, 315.

The opinion of the Alabama Supreme Court brushes aside *Thornhill* and its progeny with the old saw that picketing is "speech plus" (17a). It is clear, however, that there was no "plus" in the instant case by mute pickets patrolling at the foreign flag vessels. The Alabama court relied heavily upon the line of cases holding that if there is a valid state policy to protect, such as state anti-trust policy, prohibition of racial quota hiring or forced union shop, etc., picketing may be limited or banned altogether. *International Brotherhood of Teamsters* v. *Vogt, Inc.*, 354 U.S. 284 (1957); *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490 (1949); *Hughes* v. *Superior Court*, 339

U.S. 460 (1950); *International Brotherhood of Teamsters* v. *Hanke,* 339 U.S. 470 (1950). This line of cases need not detain us inasmuch as the Alabama court was unable to point to any valid state policy. The Alabama court did, however, argue that the honoring of the picket lines by employees of the stevedoring companies resulted in an unlawful interference with the businesses of the stevedoring companies and of Malone, the farmer.

This Court has time and again held that the mere fact that a primary picket line may result in injury or damage cannot be the basis for restriction upon picketing. *Thornhill,* 310 U. S., at 104, 105; *Carlson,* 310 U. S. at 112. Merely because picketing is effective and the public refuses to patronize does not render the picketing in any way unlawful, *N.L.R.B.* v. *Fruit and Vegetable Packers,* 377 U.S. 58, 72 (1964). That was the famous "Tree Fruits" case in which this Court held that a nationwide consumer boycott was not proscribed secondary activity despite the fact of damage to the primary and secondary parties; it noted, *inter alia,* that a ban on such secondary picketing "might collide with the guarantees of the First Amendment" (*id.* at 63).

In holding that the picketing was an interference with the right of the complainants to conduct business, the Alabama Supreme Court relied heavily upon the enthusiastic testimony of petitioner Neira. That testimony, fairly read, was his personal expression of what he hoped the picketing would accomplish. The Court did not rely, however, upon the totality of Neira's testimony. It quoted a few vagrant personal expressions of his hope that the picketing would

be effective. The Alabama Supreme Court merely presumed that the trial judge found that there was wrongful interference, "for otherwise he would not have ordered the writ of temporary injunction to issue" (21a). It escapes us how the appellate court in Montgomery could have presumed how the trial court in Mobile viewed Neira's testimony in the absence of findings by the trial court.

Neira's testimony from the witness stand cannot, of course, change the purpose of the picketing as set forth on the picket signs and in the leaflets distributed by the mute pickets. Moreover, the purpose of the picketing was clearly set forth in the instructions which Neira received from the Committee of American Maritime Unions (113a, 114a). It is to be noted that the final numbered instruction advised that no one had authority to change the instructions except upon a writing from the Committee's headquarters. Neira testified that he had no authority to change the instructions (141a, 142a). Manifestly, whatever hope Neira entertained *in pectore* on the picket line, and later articulated on the witness stand, could not in any event have changed the purpose or the character of the peaceful primary nonobstructive informational picketing at the site of the vessels. It is more than distressing that the freedom of speech of American workingmen can be snatched away on such a feeble ground.

In *Seafarers International Union* v. *N.L.R.B.*, 265 F. 2d 585, 592 (D.C. Cir. 1959), it was held that hopes entertained by primary pickets that employees of secondary employers would not cross the picket line could not render the picketing unlawful, and in *Local 761, International Union of Elec-*

trical, etc., v. *N.L.R.B.*, 366 U.S. 667 (1961), this Court quoted with approval those portions of the opinion in the *Seafarers* case concerning the hope of the pickets that the picket line would be honored and the holding that picketing which induced secondary employees to respect a primary picket line is not the equivalent of picketing which has as an object the inducing of employees to engage in concerted conduct against their own secondary employer in order to force him to refuse to deal with the primary employer (*id.* at 673). This Court there held that primary picketing at a common situs, appealing to neutral employees whose tasks aid the primary employer's everyday operations, is not unlawful. Accord: *United Steel Workers* v. *N.L.R.B.*, 376 U.S. 492, 501 (1964).

This Court has repeatedly admonished that freedom of speech may not be curtailed without clearly identifying the unlawful conduct which is sought to be prohibited. First and Fourteenth Amendment rights may not be taken away without clear and sufficient findings of fact; *Wood* v. *Georgia*, 370 U.S. 375, 382-384 (1962)—no findings; *Chase* v. *Robson*, 435 F. 2d 1059, 1061 (7 Cir. 1970)—insufficient findings; see also *Logan Valley Plaza*, 391 U.S. at 314. We do not rest our argument entirely on the lack of findings. It is clear that, in any event, there could have been no finding that the purpose of the picketing was unlawful.

By virtue of the injunction against peaceful primary informational picketing, plaintiffs have been deprived of their freedom of speech. This Court must restore it to them.

Conclusion

We submit that where American seamen are involved in a dispute with foreign flag vessels, protesting their loss of domestic employment opportunities, as at bar, their peaceful primary informational picketing can be regulated, if at all, only by the National Labor Relations Board. This Court has reiterated the doctrine of preemption. The Alabama courts have ignored the decisions of this Court.

Also ignored were decisions of this Court holding that peaceful picketing is within the protection of the First and Fourteenth Amendments, and that the right of free speech cannot be lost without specific findings of unlawful purpose or unlawful means. Here, the voices of American seamen were stilled in Alabama on the mere assumption of the Supreme Court of that state that the trial court must have found an unlawful purpose, otherwise it would not have issued the injunction. Such an assumption was surely not within the competence of an appellate court and was not, of course, warranted by anything in the record. The purpose of the picketing was clearly set forth on the picket signs, in the leaflets distributed by mute pickets and in the instructions from the Committee of American Maritime Unions. American seamen have lost the right of free speech because, said the Supreme Court of Alabama, their speech was effective or, at least, one union member hoped

that it would be effective. This Court must restore those First and Fourteenth Amendment freedoms to American seamen.

Respectfully submitted,

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Certificate of Counsel

I, DAVID JAFFE, one of the attorneys for Petitioners herein, do hereby certify that on this 8th day of November, 1973, three copies of the foregoing petition for writ of certiorari have been served on each of the attorneys for Respondents as follows:

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by mailing the same to them through the United States Postal Service, postage prepaid.

/s/ DAVID JAFFE
DAVID JAFFE

NOV. 9 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-748

AMERICAN RADIO ASSOCIATION, AFL-CIO, *et al.*,
Petitioners,

v.

MOBILE STEAMSHIP ASSOCIATION, INC.
and ROBERT E. MALONE,
Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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APPENDIX A

Statute Involved

From National Labor Relations Act, 29 United States Code:

§157. RIGHT OF EMPLOYEES AS TO ORGANIZATION, COLLECTIVE BARGAINING, ETC.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title. July 5, 1935, c. 372, §7, 49 Stat. 452; June 23, 1947, c. 120, Title I, §101, 61 Stat. 140.

§158. UNFAIR LABOR PRACTICES

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in

commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: *Provided further,* That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

• • •

APPENDIX B

Constitutional Provisions Involved

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX C

Opinion of Supreme Court of Alabama May 3, 1973

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1972-73

AMERICAN RADIO ASSOCIATION, AFL-CIO, etc., et al.

v. SC 12

MOBILE STEAMSHIP ASSOCIATION, INC., et al.

Appeal from Mobile Circuit Court, In Equity

McCALL, JUSTICE.

The American Radio Association, AFL-CIO, an unincorporated labor organization, and other respondents in this cause, hereafter sometimes called the "Unions," appeal from an order of the circuit court, granting, after notice and a court hearing, a writ of temporary injunction, enjoining and restraining the appellants from picketing.

The appellee Mobile Steamship Association, Inc. is the representative and agent of numerous steamship and contract stevedoring companies who do business at the Port of

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Mobile. The appellee acts as collective bargaining representative and contract negotiator on behalf of its several principals in their business relations with local unions of the International Longshoremen's Association, who supply the stevedoring services for the loading and discharging of cargo carried by numerous ships calling at the Port of Mobile.

The appellee, Robert E. Malone, who was allowed to intervene in the cause, is a farmer in Mobile County. He grows soybeans which are delivered in sale by him at the grain elevator at the Alabama State Docks. Soybeans are exported by ship through the State Docks facility.

Shortly after noon on November 3, 1971, pickets for several of the appellant unions appeared at land entrances to the Alabama State Docks at Mobile, picketing and patrolling with uniform signs reading as follows:

"'ATTENTION TO THE PUBLIC

"'The wages and benefits paid aboard the vessel SS Aqua Glory and the SS Bel Hudson are substandard to those of the American seamen. This results in extreme damage to our wage standard and the loss of our jobs.

"'Please do not patronize these vessels. Help the American seamen.

"'We have no dispute with other vessels at this site.'"

The names of the picketing unions appeared beneath the quoted matter.

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In addition to carrying the picketing signs, the pickets distributed to those persons, who asked if they should cross the picket line, leaflets which read as follows:

"To the Public

"American Seamen have lost approximately 50% of their jobs in the past few years to foreign flag ships employing seamen at a fraction of the wages of American Seamen.

"American dollars flowing to these foreign ship owners operating ships at wages and benefits substandard to American Seamen, are hurting our balance of payments in addition to hurting our economy by the loss of jobs.

"A strong American Merchant Marine is essential to our national defense. The fewer American flag ships there are, the weaker our position will be in a period of national emergency.

"Please Patronize American Flag Vessels, Save Our Jobs, Help Our Economy and Support Our National Defense by Helping to Create a Strong American Merchant Marine.

"Our dispute here is limited to the vessel picket at this site, the SS ".

The names of the unions again appeared at the bottom of the leaflets.

Two days later the pickets shifted to pier side, where the S.S. Aqua Glory and S.S. Bel Hudson were berthed. Soon afterwards the pickets were withdrawn from the Bel Hudson, a ship of British registry.

Appendix C

The Aqua Glory was a foreign-flag ship of Liberian registry, engaged in carrying cargo in foreign commerce, and manned by a crew of alien seamen. No more than four persons engaged in the picketing along pier side at the gangway to the Aqua Glory. No breach of contract was involved. The picketing was peaceful and without any violence. There was no mass picketing, no trespassing on the property of others, no blocking of ingress or egress, no shouting, no assaults, and no overt acts of force. The pickets, while on duty carried their signs, but refused to converse with other individuals. They remained silent and only referred inquisitors to their picketing signs and handed them one of the above described leaflets. The appellant unions asserted that they purposed to picket all foreign-flag ships that docked at the port in order to evidence a nationwide protest by American Maritime Workers over the loss of their jobs to foreign-flag vessels which paid wages and benefits substandard in contrast to those paid on American-flag vessels. The appellants insisted that they would attack the problem of the loss of job opportunities for American seamen in the United States to foreign-flag vessels by publicity or informational picketing and the distribution of literature in selected American ports, including the Port of Mobile, requesting the public not to patronize foreign-flag vessels which were picketed, but to patronize American-flag vessels, pointing out to the public that wages and benefits paid to foreign-flag seamen were vastly inferior to those paid American seamen.

Posting the pickets, as was done on the dock adjacent to the Aqua Glory, brought about an immediate refusal

by the stevedore workers of the locals of International Longshoremen's Association to cross the picket line of the appellant unions. About eighty percent of the cargo ships that enter the Port of Mobile, sail under a foreign-flag and are manned by alien crews.

The appellees complained that the picketing was illegal because it interfered with contractual relations between members of the appellee association and companies owning and operating foreign-flag vessels, and, wrongfully interfered with lawful business of the appellees.

There was no dispute between the operators of the Aqua Glory and her foreign crew. But there was a labor dispute between the American union and the operators of the Aqua Glory. This was brought about by substandard wages and benefits, resulting in loss of jobs by American seamen. The American unions contend that they are seeking relief from this situation. A labor dispute includes any controversy concerning terms, tenure or conditions of employment, regardless of whether the disputants stand in the proximate relation of employee and employer. 29 U. S. C., §152(9).

The threshold point for determination is, granting there is a labor dispute between the unions and the foreign companies, is it a "labor dispute" of such nature that the Labor Management Relations Act, 29 U. S. C., §141 et seq., preempts the jurisdiction of the state courts of Alabama?

The appellants contend that the jurisdiction of the state court is preempted by the Labor Management Rela-

tions Act, 29 U. S. C., §141 et seq. and that exclusive jurisdiction of the case is reserved to the National Labor Relations Board. In opposition the appellees assert that the jurisdictional provisions of the National Labor Relations Act, 29 U. S. C., §151 et seq. as amended by the Labor Management Relations Act, 1947, 29 U. S. C. §141 et seq. do not extend to maritime operations of foreign-flag ships employing alien seamen. 48 Am. Jur. 2d, §405, p. 296. If the appellees' insistence be a correct statement of law, then, under the facts in this case, the state court did not lack jurisdiction to entertain this suit in equity as urged by the appellants.

As already pointed out, there is a labor dispute here between the unions and foreign ship companies over terms, tenure and conditions of employment by them of their foreign crews. The picketing of the foreign ship has the effect to both publicize the unions' grievance against substandard wages as well as to bring pressure on the foreign employer to pay its seamen higher wages and provide them additional benefits. This purpose is borne out by the language of the placards and leaflets. The Supreme Court of the United States has refused to apply the provisions of the National Labor Relations Act in instances concerning the internal affairs of foreign ships even when in American ports and arguably affecting the American economy. Congress has not clearly extended NLRB jurisdiction to such matters and the court has been unwilling to find board jurisdiction in an area where international relations are involved. *McCulloch* v. *Socie-*

dad Nacional de Marineros de Honduras, 372 U. S. 10, 9 L. Ed. 2d 547, 83 S. Ct. 671 (1963).

In *McCulloch* v. *Sociedad Nacional de Marineros de Honduras,* supra, United Fruit Company, a New Jersey corporation, owned all of the stock of Empresa Hondurena de Vapores, S.A., a Honduran corporation, which legally owned each of the vessels, sought to be unionized. Each vessel flew a foreign flag, carried a foreign crew and had other contacts with the nation of its flag. The National Labor Relations Board ordered an election in a representation proceeding on application of the National Maritime Union, which had the effect of canceling the bargaining contract that Empresa's seamen had with their Honduran Union, Sociedad. Sociedad brought one of the suits involved on appeal to prevent the election.

The court said that the basic question was whether the NLRA as written was intended to have any application to foreign registered vessels employing only alien seamen. After noting that the Congress and the State Department had recognized the right of foreign ships to conduct their own internal affairs, the court concluded, citing *Benz* v. *Compania Naviera Hidalgo,* 353 U. S. 138 at 147, 1 L. Ed. 2d 709, 77 S. Ct. 699, that "to sanction the exercise of local sovereignty under such conditions in this 'delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed.' "

Explaining further its rationale, the court at p. 18 in *McCulloch,* supra, said:

"Six years ago this Court considered the question of the Taft-Hartley amendments to the Act in a suit for damages 'resulting from the picketing of a foreign ship operated entirely by foreign seamen under foreign articles while the vessel [was] temporarily in an American port.' Benz v. Compania Naviera Hidalgo, supra, at 139. We held that the Act did not apply, searching the language and the legislative history and concluding that the latter 'inescapably describes the boundaries of the Act as including only the workingmen of our own country and its possessions.' Id., at 144. Subsequently, in Marine Cooks & Stewards v. Panama S.S. Co., 362 U. S. 365 (1960), we held that the Norris La-Guardia Act, 29 U. S. C. §101, deprived a Federal District Court of jurisdiction to enjoin picketing of a foreign-flag ship, specifically limiting the holding to the jurisdiction of the court 'to issue the injunction it did under the circumstances shown.' Id., at 372. That case cannot be regarded as limiting the earlier Benz holding, however, since no question as to 'whether the picketing * * * was tortious under state or federal law' was either presented or decided. Ibid. Indeed, the Court specifically noted that the application of the Norris-LaGuardia Act 'to curtail and regulate the jurisdiction of courts' differs from the application of the Taft-Hartley Act 'to regulate the conduct of people engaged in labor disputes.' Ibid.; see Comment, 69 Yale L. J. 498, 523-525 (1960)."

Again in *Incres Steamship Company* v. *International Maritime Workers Union*, 372 U. S. 24, 9 L. Ed. 2d 557, 83 S. Ct. 611 (1963), the facts involved an American seamen's union picketing a foreign owned vessel, manned by a foreign crew, in a campaign to organize the crew. The court held that the NLRB was without jurisdiction, saying:

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"We held today in Sociedad Nacional that the Act does not apply to foreign-registered ships employing alien seamen. The holding and reasoning in that case are equally applicable to the maritime operations here, leading to the conclusion that the Act does not apply. It is true that our decision in Garmon [359 U. S. 236, 3 L. Ed. 2d 775, 79 S. Ct. 773 (1959)], supra, as applied in Marine Engineers Beneficial Assn. v. Interlake S.S. Co., 370 U. S. 173 (1962), results in pre-emption of state court jurisdiction if a dispute is arguably within the jurisdiction of the Board. But, although it was arguable that the Board's jurisdiction extended to this dispute at the time of the New York Court of Appeals' decision, our decision in Sociedad Nacional clearly negates such jurisdiction now. In that case we were immediately concerned with the Board's jurisdiction to direct an election, holding that the Act had no application to the operations of foreign-flag ships employing alien crews. Therefore, no different result as to Board jurisdiction follows from the fact that our immediate concern here is the picketing of a foreign-flag ship by an American union. See Benz v. Compania Naviera Hidalgo, 353 U. S. 138 (1957). The Board's jurisdiction to prevent unfair labor practices, like its jurisdiction to direct elections, is based upon circumstances 'affecting commerce,' and we have concluded that maritime operations of foreign-flag ships employing alien seamen are not in 'commerce' within the meaning of §2(6), 29 U. S. C. §152(6)."

Applying the rationale of the above decisions of the Supreme Court of the United States to the facts of the case at hand, we conclude that the Labor Management Relations Act of 1947 does not apply in this case and did not preempt the state court from entertaining juris-

diction of the cause. The dispute was either one between the unions and the foreign shipowners to force a raise in the internal standards of those vessels, or one where the intent was to block use of those ships to force Congress to act in the international sphere, which in either case are matters affecting international relations and not properly for NLRB jurisdiction.

We disagree with the appellants' contention that the state court may not grant injunctive relief because the Norris-LaGuardia Act, 29 U. S. C. §§101, et seq., prohibits the issuance of any restraining order or temporary or permanent injunction by a state court in a peaceful labor dispute.

The Norris-LaGuardia Act, 29 U. S. C. §§101, et seq., provides as follows:

> "No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter."

29 U. S. C., §113(d) defines the term "court of the United States" as follows:

> "(d) the term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

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The anti-injunction provisions of the Norris-LaGuardia Act are not applicable to state courts and hence, do not deprive them of jurisdiction to issue an injunction in a case involving a labor dispute.

In *Ford* v. *Boeger,* 362 F. 2d 999 (1966); certiorari denied sub nom *Curtis* v. *Boeger,* 386 U. S. 914, 17 L. Ed. 2d 787, 87 S. Ct. 857; petition for rehearing denied 386 U. S. 978, 18 L. Ed. 2d 140, 87 S. Ct. 1160; motion for leave to file second petition for rehearing denied 387 U. S. 949, 18 L. Ed. 2d 1341, 87 S. Ct. 2072, the court said:

> "Petitioners' reliance upon the Norris-LaGuardia anti-injunction Act, 29 U. S. C. A. §101 et seq., is misplaced. The Norris-LaGuardia injunction limitations are imposed only upon courts of the United States. The Court of Appeals for the Third Circuit in American Dredging Co. v. Local 25, etc., 3 Cir., 338 F. 2d 837, 850-856, clearly and convincingly demonstrates why prohibition applies only to federal courts—not to state courts."

In the cited case of *American Dredging Co.* v. *Local 25, Marine Div., Int'l Union of Operating Eng'rs,* 338 F. 2d 837, 852 (3d Cir. 1964), certiorari denied 380 U. S. 935, 13 L. Ed. 2d 822, 85 S. Ct. 941 (1965), the court stated:

> "There is nothing in the language of the Act or its legislative history which can possibly, within 'the range of judicial inventiveness', or the process of judicial fashioning, be construed as extending to the jurisdiction of state courts."

Among other cases holding without merit the contention that the Norris-LaGuardia Act deprived the court

below of jurisdiction to issue the injunction in this labor dispute are the following decisions of state courts: *Shaw Electric Co., Inc.* v. *International Brotherhood Electrical Workers, Local Union 98,* 418 Pa. 1, 208 A. 2d 769 (1965); *South Atlantic and Gulf Coast District, International Longshoremen's Ass'n* v. *Producers Grain Corporation,* 437 S. W. 2d 33 (Tex. Civ. App. 1969).

We are aware that there is considerable difference of thought on the legality of state court injunctions in matters involving labor disputes. To this we can only say that generally where there is a clearly defined labor dispute affecting commerce the NLRB has jurisdiction preemptive of all courts state and federal. But, as here, where the dispute is one where commerce, as covered by the federal act, is not involved, and the resulting effect, albeit non-direct, of the dispute immediately endangers the business activities of a large segment of the area's population, we think that it is neither illegal nor improper for the court to take jurisdiction and deal temporarily with the subject matter.

The second tier of the dispute on appeal involves the propriety of the issuance of the temporary injunction. Specifically, even though there was no NLRB preemption, was the activity involved protected by the First Amendment as free expression; or was it such unlawful interference with the business of another as will be enjoined under our state laws?

The appellant unions contend that their activity is protected as free speech under the United States Constitu-

tion as construed in *Thornhill* v. *Alabama,* 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736, and its progeny. We are mindful however of the characterization of similar matters as "speech plus," that is, speech with collateral consequences involved that invite regulation, or, as matters excepted from First Amendment protection because of overriding state interest. The First and Fourteenth Amendments do not afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets as those amendments afford to those who communicate by pure speech.

The case of *International Brotherhood of Teamsters* v. *Vogt, Inc.* 354 U. S. 284, 1 L. Ed. 2d 1347, 77 S. Ct. 1166 (1957) has approached resolving the issue in the labor forum. In *Vogt,* a union, having a dispute with a group of nonunion workers, picketed the employer's place of business. In consequence, truckers of other employers refused to haul to and from Vogt's business. The neutral employer sought and obtained a state court injunction. The court noted the historical development of the theory that labor picketing is protected free speech, beginning in the *Thornhill* case, supra, and furthered in *AF of L* v. *Swing,* 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568 (1941). After analyzing these decisions, the *Vogt* case, supra, went on to admit that the reach of those opinions had perhaps exceeded practicality, and discussed three subsequent Supreme Court cases which strongly parallel the present dispute. In *Giboney* v. *Empire Storage & Ice Co.,* 336 U. S. 490, 497, 93 L. Ed. 834, 69 S. Ct. 684 (1949), the court said:

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"It is contended that the injunction against picketing adjacent to Empire's place of business is an unconstitutional abridgement of free speech because the picketers were attempting peacefully to publicize truthful facts about a labor dispute. * * * But the record here does not permit this publicizing to be treated in isolation. For according to the pleadings, the evidence, the findings, and the argument of the appellants, the sole immediate object of the publicizing adjacent to the premises of Empire, as well as the other activities of the appellants and their allies, was to compel Empire to agree to stop selling ice to non-union peddlers. Thus all of appellants' activities * * * constituted a single and integrated course of conduct, which was in violation of Missouri's valid law. * * *"

In *Hughes* v. *Superior Court of California*, 339 U. S. 460, 94 L. Ed. 985, 70 S. Ct. 718 (1950), and in *International Brotherhood of Teamsters Union* v. *Hanke*, 339 U. S. 470, 94 L. Ed. 975, 70 S. Ct. 773 (1950), state court injunctions against picketing were upheld on a showing that the courts were effecting a valid state interest or public policy. In *Hughes*, the policy was against racial quota hiring and in *Hanke* the policy was the avoidance of forced union shop agreements. The court in *Vogt* held that, while states cannot enact blanket prohibitions against picketing, where there are conflicting interests between the picketers and the public policy of a state, the picketing can be enjoined, and allowed the state court injunction against picketing to stand.

In the instant case as will be shown infra, we think there was evidence sufficient to support a finding that the

action of the unions was in part with the goal of interfering with the business of the appellees in their shipping and farming operations. The United States Court of Appeals for the First Circuit has recently noted that there is a valid state interest in the preservation of local economy.

In *Grinnell Corp.* v. *Hackett,* 41 U. S. L. W. 2533 (CA 1st Cir., March 15, 1973) which admittedly did not involve a picketing injunction, the court recognized two economic and social effects which are valid interests of the state and may be considered in labor disputes. The first of the two effects, the avoidance of violence in strikes is not here present, but the second recognized effect of a labor dispute is. The court noted that a state may be validly concerned with the "avoidance of economic stagnation in the local community" caused by strike activity.

We feel the Circuit Court in Mobile County could validly consider the economic effects of the picketing at the particular time the dispute was in progress and issue its order ceasing all picketing until the underlying questions could be resolved without unlawfully interfering with appellants' rights to express themselves on the disputed issue.

While peaceful picketing, standing alone, is conceded to be lawful and is not to be enjoined, picketing still may be enjoined if it is done in an unlawful manner or for an unlawful purpose. *Local No. 612, International Brotherhood of Teamsters* v. *Bowman Transportation, Inc.,* 276 Ala. 563, 165 So. 2d 113 (1964); *Bagett Transportation Co.* v. *Local No. 261, United Wholesale & Warehouse Employees Union,* 259 Ala. 19, 65 So. 2d 506 (1953); *Hotel & Restaurant Em-*

ployees, International Alliance v. *Greenwood,* 249 Ala. 265, 30 So. 2d 696 (1947); *Thornhill* v. *Alabama,* 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736 (1940). The conduct of picketing, if done in an unlawful manner or for an unlawful purpose, is not beyond the control of a state. *Baggett Transportation Co.* v. *Local No. 261, United Wholesale and Warehouse Employees Union,* supra; *Hughes* v. *Superior Court of California,* 339 U. S. 460, 94 L. Ed. 985, 70 S. Ct. 718 (1950). If the purpose or object for the picketing, or any of the purposes or objects therefor, is interference with the right of a third party to conduct his business, the picketing is wrongful and may be enjoined. *International Brotherhood of Teamsters* v. *Vogt, Inc.,* 354 U. S. 284, 1 L. Ed. 2d 1347, 77 S. Ct. 1166 (1957).

In *Pennington* v. *Birmingham Baseball Club,* 277 Ala. 336, 170 So. 2d 410 (1964), the court said:

> "* * * [T]he right to conduct one's business without the wrongful interference of others is a valuable property right which will be protected if necessary, by injunctive process. Carter v. Knapp Motor Co., 243 Ala. 600, 11 So. 2d 383, 144 A. L. R. 1177."

So the bare question in this case narrows to whether or not there was a purpose or objective on the appellants' part to wrongfully interfere with the appellees' business, or was the picketing to publicize the appellants' cause with mere resulting incidental interference to appellees' business? The trial judge's decree, granting the writ of temporary injunction, made no finding of fact from the evidence. But apparently the trial judge found from the evidence that there was wrongful interference by the ap-

pellants with the appellees' business, for otherwise, he would not have ordered the writ of temporary injunction to issue.

The appellants contend that their only purpose was to carry out publicity picketing to inform the public and Congress of the plight of the American seamen. The appellee contends that the picketing was done for the purpose of inducing and encouraging the appellee's employees to cease loading the soybeans aboard foreign ships thereby interfering with the business of its member employers.

We must decide whether the trial judge abused his discretion by concluding that there was wrongful interference with the appellee's business, warranting his issuance of the temporary writ. In this situation some well known equitable principles should be kept in mind. Among these, it is to be remembered that, in determining whether or not a temporary injunction should have issued, wide discretion is accorded the trial judge hearing the application and making the decision, and, where no abuse of that discretion is shown, his action will not be disturbed on appeal. *Slay* v. *Hess,* 252 Ala. 455, 41 So. 2d 582 (1949); *Jones* v. *Jefferson County,* 203 Ala. 137, 82 So. 167 (1919); *Holcomb* v. *Forsyth,* 216 Ala. 486, 113 So. 516 (1927); *Boatwright* v. *Town of Leighton,* 231 Ala. 607, 166 So. 418 (1936).

In *Madison Limestone Co.* v. *McDonald,* 264 Ala. 295, 300, 87 So. 2d 539 (1956), we said this:

> "• • • When the bill contains equity, the trial judge, in granting a temporary injunction to pre-

> serve the status quo until the final hearing exercises a wide discretion, taking into consideration the relative advantages and disadvantages resulting from granting or refusing to grant the injunction. Unless that discretion is abused it will not be disturbed on appeal. Slay v. Hess, supra; Loop National Bank v. Cox, [255 Ala. 388, 51 So. 2d 534] supra."

And, a sequel to the theories of balancing conveniences between the parties and the discretionary power of the trial judge to maintain the status quo until the final hearing, is the premise that the issue of who will prevail on final hearing is not concluded on a preliminary hearing to determine whether an injunction pendente lite will issue or not. In *Hamilton* v. *City of Anniston,* 248 Ala. 396, 401, 27 So. 2d 857 (1946), the court said:

> "* * * The right to temporary injunction does not depend on any advance finding for complainant on the merits. Odoms v. Woodall, 246 Ala. 427, 20 So. 2d 849; Berman v. Wreck-A-Pair Bldg. Co., 234 Ala. 293, 175 So. 269. It is not necessary that complainant must present a case which will certainly entitle him to a decree upon a final hearing for he may be entitled to temporary injunction though his right to relief may ultimately fail. If the bill clearly shows a substantial question to be decided, a temporary injunction to preserve the status quo is in order. Glass v. Prudential Ins. Co. of America, 246 Ala. 579, 22 So. 2d 13; Coxe v. Huntsville Gaslight Co., 129 Ala. 496, 29 So. 867." See also *East Gadsden Bank* v. *Bagwell,* 273 Ala. 441, 445, 143 So. 2d 438.

Appendix C

We have no reason to assume otherwise than that the trial judge, in the exercise of the wide discretion accorded him in a matter of this kind, gave close heed to the issues involved, and concluded that while a substantial question remained to be decided, the immediate circumstances obliged him to order the temporary writ. Even so, we must consider the record to determine whether the trial judge abused his discretion in granting the temporary injunction. This necessitates our deciding whether or not there was any evidence to support a conclusion that the picketing had as a purpose or object the wrongful interference with the appellee's business.

During the course of the cross-examination of a witness for appellant unions, the following question and answer colloquy occurred:

> "Q. What percentage of the vessels that call here at the Port [of Mobile] are of foreign flags? A. I would say about 70 to 80 percent.
>
> "Q. Yes, sir. And it's your instructions from your International Headquarters to picket 70 or 80 percent of the vessels that call at the Port of Mobile? A. Within my resources, yes, to picket every one.
>
> "Q. All right, sir. And you would assume, as a man knowledgeable in the field of labor picketing that good labor men and good Union men would not cross those picket lines? A. We were hoping that they wouldn't do that.
>
> "Q. Yes, sir. And this hope has been fulfilled in the Port of Mobile as far as longshoremen are concerned, isn't that true? A. Well, to a point, yes.

Appendix C

"Q. *Now, would it not be then a fair conclusion to say that you had hoped and do hope that you will be able to prevent 70 or 80 percent of the vessels in the Port of Mobile from loading or from unloading cargo?* A. *My hope is to clutter up the Port of Mobile with foreign flags—Liberian, Panamanian ships—to bring sufficient pressure on the United States Government to do something about the American merchant marine.*

"Q. *That's your intention?* A. *Yes, sir.*

"Q. *That's your purpose?* A. *Yes, sir.*" (Emphasis supplied)

• • •

"Q. All right, sir. But you realize that your picketing is keeping members of the Mobile Steamship Association from loading and unloading these vessels that you are picketing, do you not? A. That is not the purpose of our picket line.

"Q. No, sir, I didn't ask you the purpose. You realize today that your picketing is preventing members of the Association from loading and unloading these vessels that you are picketing? A. *I hope that my picket line will shut the whole State Docks down and let everybody go home for a while. I hope I can do that. Not just the Mobile Steamship Association.*" (Emphasis supplied)

In 51A C. J. S. Labor Relations, §319, p. 135, we find a statement of law that is material in a decision of this matter. It reads as follows:

"*Expectation, hope or desire.* While it has been said that Congress did not intend to proscribe all actions accompanied merely by hope that such activity would affect the business relations between

> the primary and neutral employees, if picketing is conducted by a primary union with an expectation or a hope or a desire that employees of the secondary employer will be induced or encouraged to take concerted action, so that the secondary employer will cease doing business with the primary employer, the act bars such activity."

The Fifth Circuit Court of Appeals stated in *Superior Derrick Corporation* v. *National Labor Relations Board,* 273 F. 2d 891, 897 (5th Cir. 1960):

> "* * * [I]f there is an expectation or a hope or a desire that employees of the secondary employer will be induced or encouraged to take concerted action so that the secondary employer will cease doing business with the primary employer, then the Act bars that activity. * * * The activity, including the picket line, must be conducted in such a way that the normal appeal of a picket line is overcome. It must be done so that all secondary employees will know that the primary union does not seek what the law forbids—pressure on the primary employer through pressure from the secondary employer because of concerted pressure on secondary employees on that secondary employer * * *"

If a purpose or an objective of the picketing was to crowd the Port of Mobile with foreign ships calling there to load and unload cargo, in order to bring pressure on the federal government to do something about the American merchant marine, or, if the picketing was being carried on with the hope or expectation or desire to shut down the whole State Docks, not just the appellant, Mobile

Steamship Company, so no one could work, then we think a substantial question would arise as to whether or not another intended purpose of the picketing was interference with appellee's business, which was the loading and unloading of ships. This situation called on the trial judge to exercise his discretion as to whether or not to grant a temporary injunction to maintain the status quo until a full hearing could be had before the court on the merits of the case. In his decision, he did not, in our opinion, abuse his discretion. We find no error in the trial judge's granting the writ of temporary injunction.

The appellants also assign as error the court's overruling their demurrer to the bill of complaint. Essentially the grounds of demurrer raise the same propositions of law to which we have written in this opinion. We see no need of speaking further to these legal issues.

The decree of the court entered by the trial judge in this cause is due to be affirmed.

AFFIRMED.

Coleman, Bloodworth, Faulkner, and Jones, JJ., concur.

I, J. O. SENTELL, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 3 day of May 1973.

J. O. SENTELL
Clerk, Supreme Court of Alabama

APPENDIX D

Denial of Rehearing

OFFICE OF

CLERK OF THE SUPREME COURT

STATE OF ALABAMA

Montgomery

Re: SC 12

AMERICAN RADIO ASSOC., *et al.*

Appellant

vs.

MOBILE STEAMSHIP ASSOC., INC., *et al.*

Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

Application for rehearing overruled. No opinion written on rehearing.

J. O. SENTELL
Clerk, Supreme Court of Alabama

July 5, 1973

APPENDIX E

Order for Injunction

IN THE

CIRCUIT COURT OF MOBILE COUNTY

ALABAMA, IN EQUITY

MOBILE STEAMSHIP ASSOCIATION, INC., a nonprofit corporation,

Complainant,

and

ROBERT C. MALONE,

Intervening Complainant,

vs.

AMERICAN RADIO ASSOCIATION, AFL-CIO, *et al.*,

Respondents.

MOBILE STEAMSHIP ASSOCIATION, INC., a nonprofit corporation, Complainant in the above entitled cause, and ROBERT C. MALONE, Intervening Complainant, having presented to the undersigned as one of the Judges of the Circuit Court of Mobile County, Alabama, their sworn Bills of Complaint praying for a temporary writ of injunction against the Respondents in the above entitled cause; and the Court after holding a hearing in open court and having considered the matter, and affidavits and oral testimony

and being of the opinion, and finding that said temporary injunction should be issued as prayed for in said Complaint;

Now Therefore It Is Ordered, Adjudged and Decreed that, upon the Complainants giving bond, with good and sufficient surety, in the amount of $5000.00 Dollars, to be approved by the Register, conditioned to pay all damages and costs which any of the Respondents may sustain by the suing out of such an injunction, if the same is dissolved, a temporary injunction shall issue enjoining and restraining American Radio Association, AFL-CIO; International Organization of Masters, Mates and Pilots, AFL-CIO; National Marine Engineers Beneficial Association, AFL-CIO; National Maritime Union of America, AFL-CIO; Radio Officers Union of the United Telegraph Workers, AFL-CIO; Seafarers International Union of North America, AFL-CIO; Price L. Mitchell; Charles D. Malloy; Layton Overstreet; Louis F. Neira; AB; CD; EF; GH; IJ; KL; MN; OP; QR; ST; UV; WX; YZ; and their respective servants, agents, pickets, officers, employees, members and representatives, separately and severally, and those in active concert and participation with them, separately and severally, and all other persons, from:

1. Loitering, congregating, or picketing, by standing, walking, marching, sitting, or otherwise, at or near any part of the premises owned, occupied, or used by members of Complainant Mobile Steamship Association, Inc.

2. In any manner interfering with or obstructing, by words or actions, any person or persons working for or

desiring to work for members of Complainant Mobile Steamship Association, Inc.

3. Interfering with the operations of any member of Complainant Mobile Steamship Association, Inc. in any manner whatsoever.

4. Picketing or interfering at or near Complainant Mobile Steamship Association, Inc. and its members' premises or premises used by Complainant Mobile Steamship Association's members in a manner calculated to intimidate Complainant Mobile Steamship Association's members' employees or anyone working in association with the Complainant Mobile Steamship Association's members, or any other person entering or leaving or attempting to enter or leave Mobile Steamship Association's members' premises, or calculated to induce any such persons not to report or apply for work at Mobile Steamship Association's members' premises, or any facility used by Mobile Steamship Association's members.

5. Picketing directed at vessels with whom members of the Mobile Steamship Association, Inc. have contractual relations.

6. Interfering with the contractual relations existing or to exist between the members of the Mobile Steamship Association, Inc. and companies owning and/or operating vessels calling at the Port of Mobile.

DONE this 11th day of November, 1971.

WILLIAM D. BOLLING
Circuit Judge

APPENDIX F

Notice of Appeal

IN THE

CIRCUIT COURT OF MOBILE COUNTY

ALABAMA, IN EQUITY

[SAME TITLE]

Come now American Radio Association, AFL-CIO, International Organization of Masters, Mates and Pilots, AFL-CIO; National Marine Engineers Beneficial Association, AFL-CIO; National Maritime Union of America, AFL-CIO; Radio Officers Union of the United Telegraph Workers, AFL-CIO; Seafarers International Union of North America, AFL-CIO; Price L. Mitchell; Charles D. Malloy; Layton Overstreet; Louis F. Neira; AB, CD, EF, GH, IJ, KL, MN, OP, QR, ST, UV, WX and YZ, whose names will be supplied when ascertained; and the respective agents, officers, servants, employees, pickets and members and representatives, separately and severally, of each of them, and those in active concert and participation with them, separately and severally, Respondents in the above entitled cause and hereby give notice of appeal from the Order of the Circuit Court of Mobile County, Alabama, in Equity, entered on the 11th day of November, 1971, grant-

ing a temporary injunction enjoining and restraining the Respondents from picketing.

SIMON AND WOOD

By: Otto E. Simon

Otto E. Simon

MOORE, MOORE, DOWNING & LAYDEN

By: Lionel L. Layden

Lionel L. Layden

SCHULMAN, ABARBANEL, MCEVOY & PERKEL

By: Bertram Perkel

Bertram Perkel

Attorneys for Respondents

APPENDIX G

Original Bill of Complaint

IN THE

CIRCUIT COURT OF MOBILE COUNTY

ALABAMA, IN EQUITY

No. 81679-B

MOBILE STEAMSHIP ASSOCIATION, INC.,
Complainant,

vs.

AMERICAN RADIO ASSOCIATION, AFL-CIO, *et al.*,
Respondents.

To the Honorable Judges of the Circuit Court of Mobile County, Alabama, Sitting in Equity:

Complainant respectfully shows unto the Court as follows:

1. Complainant Mobile Steamship Association, Inc. is a nonprofit corporation organized and existing under the laws of the State of Alabama with its principal place of business in Mobile, Alabama.

2. Respondent American Radio Association, AFL-CIO, hereinafter sometimes called "ARA", is an unincorporated

labor organization doing business in the city and county of Mobile, State of Alabama.

3. Respondent International Organization of Masters, Mates and Pilots, AFL-CIO, hereinafter sometimes called "MM & P", is an incorporated labor organization doing business in the city and county of Mobile, State of Alabama.

4. Respondent National Marine Engineers Beneficial Association, AFL-CIO, hereinafter sometimes called "MEBA", is an incorporated labor organization doing business in the city and county of Mobile, State of Alabama.

5. Respondent National Maritime Union of America, AFL-CIO, hereinafter sometimes called "NMU", is an unincorporated labor organization doing business in the city and county of Mobile, State of Alabama.

6. Respondent Radio Officers Union of the United Telegraph Workers, AFL-CIO, hereinafter sometimes called "ROU", is an unincorporated labor organization doing business in the city and county of Mobile, State of Alabama.

7. Respondent Seafarers International Union of North America, AFL-CIO, hereinafter sometimes called "SIU", is an unincorporated labor organization doing business in the city and county of Mobile, State of Alabama.

8. Respondent Price L. Mitchell is a member and authorized agent of Respondent MM & P.

9. Respondent Charles D. Malloy is a member and authorized agent of Respondent MEBA.

10. Respondent Layton Overstreet is a member and authorized agent of Respondent NMU.

11. Respondent Louis F. Neira is a member and authorized agent of Respondent SIU.

12. Respondents AB, CD, EF, GH, IJ, KL, MN, OP, QR, ST, UV, WX and YZ, whose names are otherwise unknown to Complainant but whose names will be supplied when ascertained, are all over the age of 21 years, or residents of Mobile County, Alabama, and are agent, members and/or pickets of one or more of the Respondent Unions designated above.

13. Complainant is and for many years has been the duly designated collective bargaining representative for and has acted on behalf of steamship companies and contract stevedores in Mobile, Alabama and as such collective bargaining agent has entered into and fulfilled collective bargaining agreements with local unions of the International Longshoremen's Association.

14. There are at the present time in the Port Of Mobile foreign flag ships awaiting loading and/or discharge by members of the Mobile Steamship Association, Inc., and in the coming weeks, additional foreign flag vessels are expected to arrive at the Port of Mobile for loading

and/or discharge by members of the Mobile Steamship Association, Inc.

15. On or about 12:10 P.M. on November 3, 1971, several persons, acting under the authorization and direction of Respondents and carrying picket signs, began picketing and patrolling the east and main gate of the Alabama State Docks Department. The picket signs carried by these individuals read substantially as follows:

"ATTENTION TO THE PUBLIC

The wages and benefits paid aboard the vessel SS AQUA GLORY and the SS BEL HUDSON are substandard to those of the American seamen. This results in extreme damage to our wage standard and the loss of our jobs.

Please do not patronize these vessels. Help the American seamen."

16. The individual pickets referred to above have distributed leaflets, a true and correct copy of which is attached hereto as "Exhibit A".

17. Notwithstanding a Federal Court order to return to work, employees of members of Complainant represented by locals of the International Longshoremen's Association have refused to cross said picket line and return to work, notwithstanding efforts by members of the Mobile Steamship Association to obtain such employees for the loading and/or discharge of the aforesaid vessels.

Appendix G

18. The picketing by Respondents commenced without prior warning and Respondents plan and intend to direct such picketing against the SS AQUA GLORY and SS BEL HUDSON and other vessels in similar situations to be loaded and/or unloaded by members of the Mobile Steamship Association, Inc.

19. Respondents have also directed employees of other employers and represented by Respondents to refuse to provide any work or service with respect to such vessels.

20. Respondents' picketing and other interference directed at the SS AQUA GLORY and the BEL HUDSON and the threat of such picketing and interference directed at other such vessels constitute an unlawful interference with the contractual relations existing between the members of the Mobile Steamship Association, Inc. and the companies that own and operate the aforementioned vessels.

21. Respondents' picketing and other interference directed at the SS AQUA GLORY and the SS BEL HUDSON and the threat of such picketing and interference directed at other such vessels constitute an unlawful interference with the rights of the Mobile Steamship Association, Inc. and its members to carry on their lawful businesses.

22. Complainant, Mobile Steamship Association, Inc., and its members, are suffering irreparable harm and grievous injury resulting from the picketing and other acts of interference directed at the SS AQUA GLORY and the SS BEL HUDSON and is threatened with further irreparable

injury through similar acts and conduct by Respondents directed at other such vessels, in that their reputation, goodwill and business, including their reputation for dependability, are being injured by Respondents' actions which have impaired and threaten further to impair their ability to enter into profitable arrangements with others; in that their contractual obligations to others are wrongfully impaired and that their relationship with their customers are being impaired; in that member companies of the Mobile Steamship Association are losing in excess of $15,000.00 per day in fixed overhead costs, including, but not limited to, offices, office and supervisory staff, and depreciation of equipment; in that soybeans normally shipped through the Port of Mobile on vessels such as the SS AQUA GLORY and the SS BEL HUDSON are being delayed and unless commenced within the immediate future will cause a loss in excess of $50,000,000.00 to the agricultural interests in this area.

23. Complainant has no adequate remedy at law for Respondents' acts set forth hereinabove, and unless the Respondents and each of them are restrained as hereinafter prayed, Complainant and this community will suffer irreparable damage. Monetary damages in part cannot be calculated.

24. If the picketing and interference by Respondents as hereinabove specified has as its purpose the matters as set forth in the literature being distributed by said pickets and on said picket signs, which Complainant denies, Com-

plainant avers that the interest of Respondents is greatly outweighed by the irreparable harm and damage that will be sustained by Complainant, its members, the Community, and members of the community, if said picketing is allowed to continue.

Prayer for Process

Wherefore, Complainant prays that said Respondents and the respective servants, agents, officers, employees, pickets, members and representatives, separately and severally, of each of said Respondents, separately and severally, be made parties hereto, and be required to plead, answer or demur hereto, within the time allowed by law.

Prayer for Relief

Complainant prays that this Honorable Court will immediately issue a temporary writ of injunction restraining and enjoining Respondents and the respective agents, officers, servants, employees, pickets and members and representatives, separately and severally, of each of them, and those in active concert and participation with them, separately and severally, from:

1. Loitering, congregating, or picketing, by standing, walking, marching, sitting, or otherwise, at or near any part of the premises owned, occupied, or used by members of Complainant.

2. In any manner interfering with or obstructing, by words or actions, any person or persons working for or desiring to work for members of Complainant.

3. Interfering with the operations of any member of Complainant in any manner whatsoever.

4. Picketing or interfering at or near Complainant and its members' premises or premises used by Complainant's members in a manner calculated to intimidate Complainant's members' employees or anyone working in association with the Complainant's members, or any other person entering or leaving or attempting to enter or leave Complainant's members' premises, or calculated to induce any such persons not to report or apply for work at Complainant's members' premises, or any facility used by Complainant's members.

5. Picketing directed at vessels with whom members of the Mobile Steamship Association, Inc. have contractual relations.

6. Interfering with the contractual relations existing or to exist between the members of the Mobile Steamship Association, Inc. and companies owning and/or operating vessels calling at the Port of Mobile.

And upon hearing of this cause this Honorable Court make the temporary injunction permanent.

Complainant further prays that the said injunction be in force and binding upon all the Respondents above named and all other persons whosoever, even though not named herein, where such person has knowledge of such injunction or when such injunction and existence thereof be made known to any such person by personal service upon him or any of them of a copy of same.

Appendix G

Complainant further prays that Complainant be allowed to recover from Respondents' damages and cost of suit herein incurred and be given such other, further and different relief as may be just and proper.

MOBILE STEAMSHIP ASSOCIATION, INC.

By J. R. Macpherson

As its President

ARMBRECHT, JACKSON & DEMOUY
Solicitors for Complainant
Post Office Box 290
Mobile, Alabama 36601

By Frank B. McRight

By Kirk C. Shaw

APPENDIX H

Complaint of Intervention

IN THE

CIRCUIT COURT OF MOBILE COUNTY

ALABAMA, IN EQUITY

No. 81,679-B

ROBERT E. MALONE,

Complainant,

vs.

AMERICAN RADIO ASSOCIATION, AFL-CIO, *et al.*,

Respondents.

To the Honorable Judges of the Circuit Court of Mobile County, Alabama, Sitting in Equity:

Complainant respectfully shows unto the Court as follows:

1. Complainant is a citizen and resident of Mobile County, Alabama, over the age of 21 years, and is a farmer engaged in growing soy beans in Wilmer, Mobile County, Alabama.

2. Respondent American Radio Association, AFL-CIO, hereinafter sometimes called "ARA", is an unincorporated

labor organization doing business in the City and County of Mobile, State of Alabama.

3. Respondent International Organization of Masters, Mates and Pilots, AFL-CIO, hereinafter sometimes called "MM & P", is an incorporated labor organization doing business in the City and County of Mobile, State of Alabama.

4. Respondent National Marine Engineers Beneficial Association, AFL-CIO, hereinafter sometimes called "MEBA", is an incorporated labor organization doing business in the City and County of Mobile, State of Alabama.

5. Respondent National Maritime Union of America, AFL-CIO, hereinafter sometimes called "NMU", is an unincorporated labor organization doing business in the City and County of Mobile, State of Alabama.

6. Respondent Radio Officers Union of the United Telegraph Workers, AFL-CIO, hereinafter sometimes called "ROU", is an unincorporated labor organization doing business in the City and County of Mobile, State of Alabama.

7. Respondent Seafarers International Union of North America, AFL-CIO, hereinafter sometimes called "SIU", is an unincorporated labor organization doing business in the City and County of Mobile, State of Alabama.

Appendix H

8. Respondent Price L. Mitchell is a member and authorized agent of respondent MM & P.

9. Respondent Charles D. Malloy is a member and authorized agent of respondent MEBA.

10. Respondent Layton Overstreet is a member and authorized agent of respondent NMU.

11. Respondent Louis F. Neira is a member and authorized agent of respondent SIU.

12. Respondents AB, CD, EF, GH, IJ, KL, MN, OP, QR, ST, UV, WX and YZ, whose names are otherwise unknown to complainant but whose names will be supplied when ascertained, are all over the age of 21 years, or residents of Mobile County, Alabama, and are agents, members and/or pickets or one or more of the respondent Unions designated above.

13. Complainant has agreed to sell his crop of soy beans at the current market price, for export, on the basis of delivery at the Alabama State Docks Elevator, Mobile, Alabama, which is the only storage facility in the State of Alabama for soy beans grown for export in South Alabama, Northwest Florida, East and Southeast Mississippi.

14. There are at the present time in the Port of Mobile foreign flag ships awaiting loading and/or discharge of various cargoes, and in the coming days, additional foreign flag vessels are expected to arrive at the Port of Mobile

for loading and/or discharge of cargoes, including grain from the Alabama State Docks Elevator.

15. On or about 12:10 p.m. on November 3, 1971, several persons, acting under the authorization and direction of respondents and wearing sandwich boards placed themselves at or near the East and main gate of the Alabama State Docks Department. The signs carried by these individuals read substantially as follows:

"ATTENTION TO THE PUBLIC

The wages and benefits paid aboard the vessels SS AQUA GLORY and the SS BEL HUDSON are substandard to those of the American seamen. This results in extreme damage to our wage standard and the loss of our jobs.

Please do not patronize these vessels. Help the American seamen."

The BEL HUDSON is a foreign flag vessel, and was at the Alabama State Docks on or about October 1, 1971, ready to load up to 785,000 bushels of soy beans then in storage at such Docks Elevator, which would have given the Alabama State Docks Elevator room to store complainant's beans, said vessel could have been loaded in about 2-3 days. As a direct and proximate result of respondents posting and showing the above signs, the I.L.A. membership refused to load such vessels, resulting in the Elevator's being full of soy beans and complainant being unable to store

same in such Elevator, and resulting in a substantial financial loss to complainant. It was not until yesterday, November 8, 1971, that the BEL HUDSON was loaded, and such grain elevator will, in all probability, be closed tomorrow.

Complainant's beans must be harvested now, and should have been harvested 2 weeks ago. Complainant cannot sell his beans to anyone, if there is not storage for them at the Docks Elevator. If such Docks Elevator can't store complainant's beans, the complainant will lose his entire crop, which will rot in the field, thereby causing irreparable injury to complainant.

Complainant further avers that in the next 2-3 days, there will be a foreign flag vessel in the Port of Mobile, for the purpose of receiving grain from the Alabama State Docks Elevator, and respondents will be at the side of the vessel showing the same signs, with the same results, i.e., the I.L.A. will not load the vessel.

16. Notwithstanding a Federal Court Order to return to work, employees of members of complainant Mobile Steamship Association, Inc. represented by locals of the International Longshoremen's Association have refused to return to work because of the presence of said individuals wearing sandwich boards, notwithstanding efforts by members of the Mobile Steamship Association to obtain such employees for the loading and/or discharge of the aforesaid vessels.

17. The actions of respondents commenced without prior warning and respondents plan and intend to direct

such actions against the SS AQUA GLORY and SS BEL HUDSON and other vessels in similar situations to be loaded and/or unloaded by members of the Mobile Steamship Association, Inc.

18. Respondents have also directed employees of other employers and represented by respondents to refuse to provide any work or service with respect to such vessels.

19. Respondents' actions are directed at the SS AQUA GLORY and the SS BEL HUDSON and such acts together with the threat of such actions and interference directed at other such vessels constitute an unlawful interference with the contractual relations existing between the companies which own and operate the aforementioned vessels.

20. Respondents' actions are directed at the SS AQUA GLORY and the SS BEL HUDSON and such acts together with the threat of such actions and interference directed at other such vessels constitute an unlawful interference with the rights of the complainant to carry on his lawful business.

21. Complainant is continuing to suffer irreparable harm and grievous injury resulting from the actions aforesaid, which are acts of interference directed at the SS BEL HUDSON and is threatened with further irreparable injury through similar acts and conduct by respondents directed at other such vessels, in that he will lose the balance of his soy bean crop, estimated to be $12,000.00, which will result from respondents' actions which have impaired and

threatened to impair complainant's ability to sell his soy bean crop, with the resultant foreclosure and loss of his farm equipment. This action by respondents, acting together, and separately and severally, is an agreement, arrangement or understanding which prevents complainant from carrying on his lawful business of farming, without just cause or a legal excuse, in violation of Title 14, Section 54, Alabama Code, as recompiled, 1958. Such actions by respondents have resulted in a boycott of plaintiff's product, his soy beans, in violation of Section 56, Title 14, Code of Alabama, 1958, and a threat which prevents complainant from engaging in his lawful occupation of farming in violation of Section 57, Title 14, Code of Alabama, as recompiled, 1958.

Such actions by respondents amount to a potentially dangerous situation, which could easily involve violence, injury to persons and destruction of private and public property.

Such actions by respondents also violate complainant's rights guaranteed by the Constitution of the State of Alabama, Art. 1, Section 1 and 6.

22. Complainant has no adequate remedy at law for respondents' acts set forth hereinabove, and unless the respondents and each of them are restrained as hereinafter prayed, complainant and this community will suffer irreparable damage. Monetary damages in part cannot be calculated.

Appendix H

23. If the actions and interference by respondents as hereinabove specified has as its purpose the matters as set forth in the literature being distributed by said union agents and on said signs, the truth or accuracy of which complainant denies, complainant avers that the interest of respondents is greatly outweighed by the irreparable harm and damage that will be sustained by complainant, his fellow farmers, the community, and members of the community, if said acts of the respondents are allowed to continue.

Prayer for Process

Wherefore, complainant prays that said respondents and the respective servants, agents, officers, employees, pickets, members and representatives, separately and severally, of each of said respondents, separately and severally, be made parties hereto, and be required to plead, answer or demur hereto, within the time allowed by law.

Prayer for Relief

Complainant prays that this Honorable Court will immediately issue a temporary writ of injunction restraining and enjoining respondents and the respective agents, officers, servants, employees, members and representatives, separately and severally, of each of them, and those in active concert and participation with them, separately and severally, from:

1. Loitering, congregating, or picketing, by standing, walking, marching, sitting, or otherwise, at or near any

part of the premises owned, occupied, or used by the Alabama State Docks Department, or, alternatively, taking any action which directly or indirectly, will interfere, in any manner whatsoever, with the ordering of any boat to the Alabama State Docks to take soy beans from its elevator or interfering, directly or indirectly, with the loading of such vessel.

2. In any manner interfering with or obstructing, by words or actions, any person or persons working for or desiring to work for any members of the Mobile Steamship Association, Inc., insofar as is concerned any vessel which may be in the Port of Mobile to load soy beans from the State Docks Elevator.

3. Interfering with the operations of any member of the Mobile Steamship Association, Inc.

4. Picketing or interfering at or near premises used by any member of the Mobile Steamship Association, Inc. in a manner calculated to intimidate any of such members' employees or anyone working in association with such Association's members, or any other person entering or leaving or attempting to enter or leave such Association's members' premises, or calculated to induce any such persons not to report or apply for work at such Association members' premises, or any facility used by such Association's members.

5. Picketing directed at vessels with whom members of the Mobile Steamship Association, Inc. have contractual relations.

Appendix H

6. Interfering with the contractual relations existing or to exist between the members of the Mobile Steamship Association, Inc. and companies owning and/or operating vessels calling at the Port of Mobile.

And upon hearing of this cause this Honorable Court make the temporary injunction permanent.

Complainant further prays that the said injunction be in force and binding upon all the respondents above named and all other persons whosoever, even though not named herein, where such person has knowledge of such injunction or when such injunction and existence thereof be made known to any such person by personal service upon him or any of them of a copy of same.

Complainant further prays that complainant be allowed to recover from respondents damages and cost of suit herein incurred and be given such other, further and different relief as may be just and proper.

Robert E. Malone, Complainant

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
Solicitors for Complainant
P. O. Box 123
Mobile, Alabama 36601

By: Alex F. Lankford, III

APPENDIX I

Demurrer

Come the Respondents and demur to the bill of complaint and each and every aspect thereof, separately and severally, and assigns the following grounds, separately and severally:

1. There is no equity in the bill.

2. From aught that appears on the face of the complaint, the activities of the Respondents are protected by the First and Fourteenth Amendments of the United States Constitution.

3. From aught that appears the Court has no jurisdiction in the matters complained of.

4. From aught that appears the Respondents are protected by the Taft-Hartley Act.

5. From aught that appears the Respondents are protected by the Norris-LaGuardia Act.

6. From aught that appears the Complainant has an adequate remedy at law.

Dated this 10th day of November, 1971.

SCHULMAN, ABARBANEL, PERKEL & McEVOY

By s/ Bertram Perkel

MOORE, MOORE, DOWNING & LAYDEN

By s/ Lionel L. Layden

SIMON AND WOOD

By s/ Otto E. Simon

APPENDIX J

Pleas

Come now the Respondents in the above styled cause and make the following pleas:

1. There is no equity in the bill.

2. The court lacks jurisdiction.

3. The Respondents are protected by the First and Fourteenth Amendments to the Constitution.

4. The Respondents are protected in their activities by the National Labor Relations Act which pre-empts the jurisdiction of the state courts.

5. Respondents further show unto this Honorable Court that it may not grant the relief sought by the Complainant because the Norris-LaGuardia Act (29 U.S.C.A. Sec. 101, et seq.) prohibits the issuance of any restraining order or temporary or permanent injunction by a State or Federal court in a peaceful labor dispute between parties in interstate commerce.

6. Respondents would further show that Complainant may not be granted the equitable relief that it seeks since they come to this Honorable Court with unclean hands in opposition to the public policy of the United States of

Appendix J

America as set forth in 46 U.S.C.A., Section 1101 and Section 1241.

Respectfuly submitted,

SIMON AND WOOD

By s/ Otto E. Simon

MOORE, MOORE, DOWNING & LAYDEN

By s/ Lionel L. Layden

SCHULMAN, ABARBANEL, PERKEL & MCEVOY

By s/ Bertram Perkel

Attorneys for Respondents

APPENDIX K

Answer

Come the Respondents and for answer to the Bill of Complaint filed in this cause, say as follows:

1. Respondents admit paragraphs 1 through 12 except there are some Respondents under 21 years of age and some Respondents are not citizens of Mobile County.

2. Respondents are not in a position to admit or deny paragraph 13 and demand strict proof thereof.

3. Respondents admit that part of paragraph 14 that at the present time there are foreign flag vessels in the port of Mobile, but has no knowledge of any foreign ships that are coming in forthcoming weeks and has no knowledge of any agreement they have with Mobile Steamship Association and demand strict proof thereof.

4. As to paragraph 15, Respondents admit picketing on November 3, 1971, but adds that the picket signs shown on the complaint is incorrect in that at the bottom of the picket sign were the following words: "we have no dispute with other vessels at this site."

5. Respondents deny the allegation of paragraph 16 because Exhibit A was not attached to the paper served on Respondents.

6. In paragraph 17 Respondents deny that they are in violation of a Federal Court Order, and have no personal knowledge of certain longshoremen who refused to work and demand strict proof thereof.

7. Respondents admit the allegations of paragraph 18, but informs the court that the SS Bel Hudson picket lines

were removed and the ship has now sailed. Respondents also for answer say that they have the right to picket said ship under the Taft-Hartley Act, Norris-LaGuardia Act and the First and Fourteenth Amendments to the United States Constitution.

8. Respondents deny the allegations of paragraphs 19, 20, 21, 22, 23 and 24 and demand strict proof thereof.

And for further answer Respondents inform the court that under the First and Fourteenth Amendments of the United States Constitution, the Taft-Hartley Act and the Norris-LaGuardia Act they have a right to place informational pickets at the site of a foreign flag ship and that this right is protected by the aforesaid Constitution and laws of the United States.

Respondents further show unto the Court that picketing at all times was peaceful, lawful and protected by federal law.

Dated this 10th day of November, 1971.

SCHULMAN, ABARBANEL, PERKEL & MCEVOY

By s/ Bertram Perkel

MOORE, MOORE, DOWNING & LAYDEN

By s/ Lionel L. Layden

SIMON AND WOOD

By s/ Otto E. Simon

APPENDIX L

Assignment of Errors

IN THE

SUPREME COURT

OF THE STATE OF ALABAMA

1st Division No. 718

APPEAL FROM THE MOBILE COUNTY
CIRCUIT COURT IN EQUITY

AMERICAN RADIO ASSOCIATION, *et al.*,
Appellants,

vs.

MOBILE STEAMSHIP ASSOCIATION, INC.,
a non profit corporation

and

ROBERT E. MALONE,
Appellees.

Come now the Appellants in the above styled case and say that errors to the injury of the Appellants were committed by the Court on the hearing and in the proceedings in the court below and assign such errors as error, separately and severally, in the following separate and several assignments of error:

• • •

3. The trial court erred in its order of November 11, 1971, when it took jurisdiction of the subject matter of the suit. (Tr. Pgs. 139-142).

4. The trial court erred in its order of November 11, 1971, when the court took jurisdiction over the subject matter that was contrary to the law in this cause. (Tr. Pg. 139 and Pg. 143).

• • •

Appendix L

6. The trial court erred in its order of November 11, 1971, in overruling the demurrer to the complaint in that the activities of the Appellants were protected by the First and Fourteenth of the U. S. Constitution. (Tr. Pg. 139).

7. The trial court erred when it overruled the demurrer in its order of November 11, 1971, because it did not rule that the National Labor Relations Act preempted the jurisdiction of the State court. (Tr. Pg. 139).

• • •

9. The trial court erred when it did not sustain the plea of the Appellant that the court lacked jurisdiction. (Tr. Pg. 23 & 142).

10. The trial court erred when it did not sustain the plea that the Appellant was protected by the First and Fourteenth Amendment to the Constitution. (Tr. Pg. 23 & 142).

11. The trial court erred when it did not sustain the plea of the Appellants that their activities were protected by the National Labor Relations Act which preempts the jurisdiction of the state court. (Tr. Pg. 23 & 142).

• • •

SIMON AND WOOD

By: Otto E. Simon

Otto E. Simon

SCHULMAN, ABARBANEL, PERKEL & MCEVOY

By: Howard Schulman

Howard Schulman

Attorneys for Appellants

APPENDIX M

Minutes of Hearing

(26)

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF ALABAMA

MOBILE, ALABAMA

EQUITY DIVISION

CASE NO. 81,679-B

MOBILE STEAMSHIP ASSOCIATION, INC., etc.,
Complainant,

vs.

AMERICAN RADIO ASSOCIATION, *et al,*
Respondents.

BE IT REMEMBERED: That, heretofore, on, to-wit, November 10th and 11th, 1971, the same being judicial days of the said Court, this cause came on for hearing on Complainant's Bill of Complaint seeking a writ of temporary injunction against Respondents before the Honorable William D. Bolling, sitting as Judge of the said Court; whereupon, the following testimony was offered and proceedings had, in due form of law:

Appendix M

Appearances:

For Complainants: Honorable Frank B. McRight, Honorable Kirk Shaw, P. O. Box 290, Mobile, Alabama.

For Respondents: Honorable Bertram Perkel (New York Bar), Honorable Otto E. Simon, Honorable James C. Wood, 1010 Van Antwerp Building, Mobile, Alabama.

For Intervenor Robert E. Malone: Honorable Alex F. Lankford, III, P.O. Box 123, Mobile, Alabama.

• • •

(33) Mr. Perkel: Your Honor, without interrupting, I think that a great deal of the material herein can be admitted by the parties, and if you would examine our answer, it may expedite everything before this Court. We have no doubt or no wish to say that we are not picketing; we have no wish to say we are not picketing with certain signs; we have no wish to say that our object is not to cause people not to do business with those ships; we have no problem with any of that. So it may expedite matters considerably if we can get this down to the legal issue, which is what we are really here for.

• • •

Appendix M

(42)

COMPLAINANT'S EXHIBIT No. 2

AFFIDAVIT

State of Alabama)
County of Mobile)

I, W.D. Walsh, after being duly sworn, depose and say:

1. I am President of Walsh Stevedoring Company, which is in the business of stevedoring and acting as steamship agents for vessels calling at the Port of Mobile. Walsh Stevedoring Company is a member of the Mobile Steamship Association, Inc. (hereinafter referred to as the "Association") and has authorized said Association to represent it in respect to matters involving labor relations. The Association is the duly authorized bargaining agent with respect to wages, hours and working conditions for Walsh Stevedoring Company and other members of the Association who are employers of labor in this port.

2. Several weeks ago, Walsh Stevedoring Company was engaged by the charterers of the SS BEL HUDSON and the SS ILKON TAK to perform the work of loading and/or discharge of said vessels. As a result of pickets which have been established by six maritime unions (American Radio Association, AFL-CIO; International Organization of Masters, Mates and Pilots, AFL-CIO; National Marine Engineers Beneficial Association, AFL-CIO; National Maritime Union of America, AFL-CIO; Radio (43) Officers Union of the United Telegraph Workers, AFL-CIO

and Seafarers International Union of North America, AFL-CIO) (all of said unions being hereinafter sometimes referred to as "Respondent Maritime Unions"), employees of Walsh Stevedoring Company represented by one or more locals of the International Longshoremen's Association have refused to cross said picket lines and perform work or services incident to said loading and/or discharge of said vessels resulting in work stoppages and/or delays. As a result, Walsh Stevedoring Company has sustained financial losses and has been caused to incur expenses incident to scheduling work which was interrupted or impeded by the aforesaid pickets.

3. In addition, our firm, Walsh Stevedoring Company, represents owners, operators and/or charterers of vessels on both a regular and casual basis who now are directing their vessels to other ports in the Gulf on account of the work stoppages resulting from the picketing being carried on by the Respondent Maritime Unions. As a result, our firm is being deprived of income which it would otherwise be earning and business which it would otherwise be conducting were it not for the said picketing.

4. As a result of the said work stoppages and delays and interference with its business and contractual relationships caused by said pickets, Walsh Stevedoring Company is losing large sums of money in the form of fixed overhead costs and lost agent and stevedoring fees.

W. D. Walsh

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Appendix M

(44)

COMPLAINANT'S EXHIBIT No. 3
AFFIDAVIT

State of Alabama)
County of Mobile)

I, John T. Murray, Jr., after being duly sworn, depose and say:

1. I am President of Murray Stevedoring Company, Inc., which is in the business of stevedoring for vessels calling at the Port of Mobile. Murray Stevedoring Company is a member of the Mobile Steamship Association, Inc., (hereinafter referred to as the "Association") and has authorized said Association to represent it in respect to matters involving labor relations. The Association is the duly authorized bargaining agent with respect to wages, hours and working conditions for Murray Stevedoring Company and other members of the Association who are employers of labor in this port.

2. Several weeks ago, Murray Stevedoring Company was engaged by the receivers of cargo on the SS AQUA GLORY to perform the work of discharge of said vessel. As a result of pickets which have been established by six maritime unions (American Radio Association, AFL-CIO; International Organization of Masters, Mates and Pilots, AFL-CIO; National Marine Engineers Beneficial Association, AFL-CIO; National (45) Maritime Union of America, AFL-CIO; Radio Officers Union of the United Telegraph Workers, AFL-CIO; and Seafarers International Union of North America, AFL-CIO) (All of said unions being

hereinafter sometimes referred to as "Respondent Maritime Unions"), at that vessel, employees of Murray Stevedoring Company represented by one or more locals of the International Longshoremen's Association have refused to cross said picket lines and perform work or services incident to said discharge resulting in work stoppages and/or delays in the discharge of said vessel. As a result, Murray Stevedoring Company has sustained losses in income, etc. and has been caused to incur expenses incident to scheduling work which was interrupted or impeded by the aforesaid pickets.

3. In addition, our firm, Murray Stevedoring Company, contracts with owners of cargo on both a regular and casual basis who are directing vessels carrying their cargo to other ports on account of the work stoppages resulting from the picketing being carried on by the Respondent Maritime Unions. As a result, our firm is being deprived of income which it would otherwise be earning and business which it would otherwise be conducting were it not for the said picketing. Murray Stevedoring Company also represents shippers of cargo who are using other means of transportation due to the strike here.

4. As a result of the said work stoppages and delays and interference with its business and contractual relationships caused by said pickets Murray Stevedoring Company is losing large sums of money in the form of fixed overhead costs and stevedoring fees, as well as goodwill and reputation in the port for being able to provide prompt and efficient stevedoring services.

John T. Murray, Jr.

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(46)

COMPLAINANT'S EXHIBIT No. 4

AFFIDAVIT

State of Alabama)
County of Mobile)

I, E. Rob Leatherbury, after being duly sworn, depose and say:

1. I am a Vice-President of Ryan Stevedoring Company, which is in the business of stevedoring for vessels calling at the Port of Mobile. Ryan Stevedoring Company is a member of the Mobile Steamship Association, Inc., (hereinafter referred to as the "Association") and has authorized said Association to represent it in respect to matters involving labor relations. The Association is the duly authorized bargaining agent with respect to wages, hours and working conditions for Ryan Stevedoring Company and other members of the Association who are employers of labor in this port.

2. Our firm, Ryan Stevedoring Company, contracts with owners and operators of vessels (of the type being picketed by the Respondent Maritime Unions herein) on both a regular and casual basis for stevedoring services who are directing their vessels to other ports on account of the work stoppages resulting from said picketing. As a result, our (47) firm is being deprived of income which it would otherwise be earning and business which it would otherwise be conducting were it not for the said

picketing. Ryan Stevedoring Company also contracts shippers of cargo who are using other means of transportation or other ports due to the strike here.

3. As a result of the said work stoppages and delays and interference with its business and contractual relationships caused by said pickets, Ryan Stevedoring Company is losing large sums of money in the form of fixed overhead costs and lost stevedoring fees.

E. Rob Leatherbury

• • •

COMPLAINANT'S EXHIBIT No. 5

This exhibit, affidavit of J. R. Macpherson, signed and notarized (48) November 10, 1971, because of the attached photographs, cannot be typed as a part of this transcript, and I so certify to the Clerk of the Court.

Nonie D. Stowe, Official Court Reporter

• • •

Mr. McRight: Your Honor, do you have the original in front of you?

The Court: Yes, sir.

Mr. McRight: It's got some exhibits that I will be referring to. Now, I will also mention that some of the exhibits are photographs which we were not able to duplicate—I did attempt and made Xerox copies

that are attached to copies I have given to attorneys, and I apologize for any inconvenience the absence of the original prints might cause, but they are attached to the original if they care to look at them.

The Court: All right, sir. Did you wish to read the affidavit?

Mr. McRight: Yes, sir, I do.

The Court: Go right ahead.

Mr. McRight: "State of Alabama, County of Mobile. I, J. R. Macpherson after being first duly sworn, depose and say: 1. I am President of the Mobile Steamship Association, Inc. (hereinafter referred to as the "Association"). The Mobile Steamship Association, Inc. is a nonprofit corporation organized and existing under the laws of the State of Alabama. Its principal place of business is located in the Commerce Building, Mobile, Alabama. The Association is composed of members who are engaged in the shipping industry in the Port of Mobile. There are two principal classifications of members of the Association. These classifications, with the membership shown afterwards, are as follows: Steamship Members, Alcoa Steamship Company, Anchor Shipping Company, Biehl and Co., Dalton Steamship Corporation, Delta Steamship Lines, East-West Shipping Agency, Fillette, Green and Company, Gulf-Puerto Rico Lines, Hasen and Tidemann, Lykes Brothers Steamship Company, Wayne McLean, Agent, Norton, Lilly and Company, Page and Jones, Steigler Shipping Company, Strachan Shipping Company, Walsh Stevedoring Company, Waterman Steamship Cor-

poration. Stevedore Members, Atlantic and Gulf Stevedoring Company, Cooper Stevedore Company, Dalton Steamship Corporation, Gulf Stevedoring Corporation, Murray Stevedoring Company, Pate Stevedoring Company, Rogers (49) Terminal and Shipping Company, Ryan Stevedoring Company, Walsh Shipping Company." Excuse me, I left out Strachan Shipping Company. "2. The Association is and for many years has been the duly designated collective bargaining agent for its members who are employers of labor in the Port of Mobile. In that capacity it has acted for and on behalf of its members employers concerning payment of wages, working conditions and other matters in connection with longshore work at the Port of Mobile. As such collective bargaining agent, it has entered into and fulfilled collective bargaining agreements with ILA Locals in the Port of Mobile concerning wages, working conditions and related matters. 3. On October 26, 1971, as a result of work stoppages by longshoremen in the Port of Mobile, the Association filed unfair labor practice charges with the National Labor Relations Board against various locals of the International Longshoremen's Association with whom it has collective bargaining relationships. These charges charged violation of Sections 8(b) (3) (refusal to bargain) and 8(b) (4) (i) (ii) (B) (secondary boycott) of the National Labor Relations Act, as amended. After investigation, the N.L.R.B. found that there was probable cause to believe that several of the charged unions had committed the practices charged by the Association and

commenced a proceeding under 10(1) of the N.L.R.A., in Federal District Court here in Mobile. The N.L.R.B.'s application for a Temporary Restraining Order in that proceeding was set for hearing at 10:30 A.M. on November 3, 1971, and, after brief argument, Judge Brevard Hand advised the parties at approximately 12:00 A.M. that the Temporary Restraining Order would issue against said ILA local unions; the said Order actually being signed at approximately 12:30 P.M. on November 3, 1971. Among other things, the Order enjoined the ILA local unions from continuing their strikes against, and refusal to perform services for members of the Association, in support of the labor dispute between the New York Shipping Association and ILA locals in the Port of New York. 4. On or about 12:10 P.M. on November 3, 1971, and almost simultaneously with the entry of the Temporary Restraining Order by Judge Hand individuals identifying themselves as representatives of the Respondents American Radio Association, AFL-CIO; International Organization of Masters, Mates and Pilots, AFL-CIO; National Marine Engineers Beneficial Association, AFL-CIO; National Maritime Union of America, AFL-CIO; Radio Officers Union of the United Telegraph Workers, AFL-CIO and Seafarers International Union of North America, AFL-CIO (50) (hereinafter sometimes collectively referred to as the "Respondent Maritime Unions") commenced picketing the East and main gates of the Alabama State Docks Department carrying signs or placards which read as

follows, to-wit: 'Attention to the Public. The wages and benefits paid aboard the vessel SS AQUA GLORY are substandard to those of the American seamen. This results in extreme damage to our wage standards and the loss of our jobs. Please do not patronize these vessels. Help the American seamen. We have no dispute with other vessels at this site.' Signed by the six respondent unions. '(Other placards carried by said pickets referred to the SS PHILIPPINE PRESIDENT QUEZON and the SS BEL HUDSON.). The photographs attached hereto as Exhibit A, Exhibit B and Exhibit C fairly and accurately depict some of said pickets and their signs or placards. Said pickets have also distributed leaflets, a true and correct copy of which it attached hereto as Exhibit D.' Your Honor, we will stop if you want to look at that now.

The Court: (After examining said Complainant's Exhibit No. 5) Go right ahead.

Mr. McRight: "5. The said pickets remained at the Main and East gates of the Alabama State Docks Department until approximately 4:40 A.M. on November 5, 1971. At approximately 4:40 A.M. on November 5, 1971, they moved from the Main and East gates of the Alabama State Docks Department to the Bulk Material Handling Plant and Pier 2 of the Alabama State Docks Department where the vessels SS ILKON TAK and SS AQUA GLORY (both foreign-flag vessels) were and are berthed awaiting loading and/or discharge. No pickets were established at the grain elevator of the Alabama State Docks Department or at the vessels SS BEL HUDSON and SS PHILIPPINE PRESIDENT QUEZON (both foreign-flag vessels) which

were berthed there. 6. Following issuance of the Temporary Restraining Order, members of the Mobile Steamship Association, Inc., in accordance with customary practice, have ordered gangs of longshoremen represented by International Longshoremen's Association, Local 1410 (Longshore Division) ("ILA Local 1410") for longshore work on the aforesaid foreign vessels. Said work orders have directed said gangs to report for work beginning on November 3, 1971, through present. Notwithstanding said work orders, employees represented by said ILA Local 1410 have refused to cross the picket lines established by the Respondent Maritime Unions and members of the Association have thus been prevented from performing stevedoring (51) services on those vessels being picketed. 7. The aforesaid failure or refusal to work by ILA represented employees has been stated by officials of said ILA unions to be the refusal by individual employees to cross the picket lines of the Respondent Maritime Unions. 8. I have been employed in the shipping industry in the Port of Mobile for the last 13 years. During that period of time I have been familiar with the maritime shipping operations conducted in the port and have been familiar with picketing that has been conducted in connection with that industry here. During that period of time I do not ever recall any picketing by all or any of the Respondent Maritime Unions in order or for the purpose of informing the public of the matters contained in the attached Exhibit D. 9. Approximately 60% of the deep-sea vessels that call at the Port of Mobile fly a foreign flag. A large percentage

of those foreign vessels carry a foreign flag different than the nationality of her crew. Vessels now being picketed by said Respondent Maritime Unions have called at the Port of Mobile on a number of other occasions and no pickets or other demonstrations were conducted by said unions. One of the vessels now being picketed, the SS AQUA GLORY, is on her third call to the Port of Mobile in the past 6 months. 10. As a result of the pickets which have been established by said Respondent Maritime Unions there has been a refusal by employees of members of the Association represented by ILA to cross said picket lines and perform the work of loading and/or unloading such vessels. As a result of such action, stevedore members of the Association have been prevented from performing stevedoring services for vessels and earning income therefrom. Walsh Stevedoring Company and Murray Stevedoring Company, members of the Association who have been engaged to unload the SS ILKON TAK and SS AQUA GLORY, respectively, have and are being prevented by the aforesaid pickets from performing stevedoring services for said vessels. 11. In addition to being President of the Association, I am the manager of Strachan Shipping Company in Mobile, which is in the business of providing service as a stevedore and steamship agent for vessels calling at the Port of Mobile. Strachan Shipping Company is a member of the Association and has authorized said Association to represent it in respect to matters involving labor relations. The Association is the duly authorized bargaining agent with respect to wages,

hours and working conditions for Strachan Shipping Company and other members of the Association who are employers of labor (52) in this port. My firm, Strachan Shipping Company, represents owners and operators of vessels on both a regular and casual basis who are now directing their vessels to other ports in the Gulf on account of the work stoppages resulting from the picketing being carried on by the Respondent Maritime Unions. As a result, our firm is being deprived of income which it would otherwise be earning and business which it would otherwise be conducting were it not for the said picketing. Strachan Shipping Company also represents shippers of cargo who are now using other means of transportation or other ports in the Gulf which are not strike bound on account of our inability here to load and unload cargo from vessels being picketed or expected to be picketed by the Respondent Maritime Unions. As a result of the foregoing, Strachan Shipping Company is losing large sums of money in fixed overhead costs and lost agent and stevedoring fees. 12. Work stoppages induced by the pickets, as aforesaid, has resulted and is resulting in irreparable injury to the Association and to its members and to others using the Port of Mobile in the following respects: a. The member companies of the Association are losing in excess of $15,000.00 per day in fixed overhead costs, including but not limited to offices, office and supervisory staff, and depreciation of equipment. b. Vessel demurrage costs range from $2,000.00 to $5,000.00 per day per vessel. c. During the normal course of business at the Port of Mobile, an average of some five vessels per day arrive

and depart from the Port of Mobile. The ocean freight revenues which are income for the industry at the rate of $35,000.00 per vessel per day. d. In addition to the above enumerated losses sustained by the Association and its members and their principals, the loss to the economy of the City of Mobile resulting from the work stoppage has been estimated to be in excess of $3,300,000.00 per week. Other forms of transportation, such as rail, barge, and truck lines which normally move cargo in or out of the Port area have been idle with resulting losses. Inland manufacturing plants are suffering the necessity of curtailing production and laying off personnel, all as a result of the inability of these plants to export their products and/or import raw materials used in the manufacturing process. e. In addition to the dock workers directly involved in work stoppages at the Port, a large number of other employees directly connected with the industry have been furloughed or laid off as a result of the strike. f. The facilities of the Alabama State Docks Department, (53) consisting of all of the public wharves in the Port of Mobile, among other things, have a cost value in excess of $50,000,000.00 and these facilities have been largely idle with resulting losses of revenues. g. Said pickets delayed the shipment of soybeans through the Port of Mobile. Unless these shipments are commenced and completed, without interruption, it has been estimated that the entire crop of approximately 13,000,000 bushels, valued at in excess of $50,000,000.00 will be lost. h. Vessels which normally call at the Port

of Mobile are being diverted to other ports. Other ports on the Gulf Coast are presently in operation and not under a strike (notably, the ports of Houston, Lake Charles, Galveston, Brownsville and New Orleans) and cargo that is normally shipped through the Port of Mobile has been and is being diverted to these ports or other forms of transportation. Additionally, foreign buyers and sellers are substituting other world markets for their sales and purchases because of the strike. Past experience has indicated that when a normal flow of trade is interrupted or diverted, a large percentage of that diverted will not revert to the Port of Mobile. Experience has indicated that business which the Port of Mobile is now losing will never be regained. 13. At the present time the Respondent Maritime Unions are picketing two vessels, the SS ILKON TAK and the SS AQUA GLORY. The parties sustaining the principal damage as a result of this picketing are the stevedores engaged to load and/or unload those vessels, the shippers and/or consignees of the cargo loaded or to be unloaded from those vessels and the Port of Mobile and community. If this and other such picketing is not ordered halted, the income lost will be irretrievable." And it's signed "J. R. Macpherson" on information and belief, and on the basis of such information and belief he says that the facts are true and correct.

Your Honor, this concludes the presentation of affidavits and evidence which we would offer in support of the relief requested.

The Court: Do you offer any oral testimony?

Mr. McRight: No, sir, we do not.

The Court: All right. I believe the next order then would probably be to look to the Intervenor. Do you have any proof you wish to submit?

Mr. Lankford: Yes, sir. If the Court please, I should like to offer as Intervenor's Exhibit 1 into evidence the Bill of Complaint and Intervention.

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Appendix M

(62) INTERVENOR'S EXHIBIT NO. 2

AFFIDAVIT OF MRS. J. C. BOHANON

State of Alabama)
County of Mobile)

Personally appeared before me, the undersigned authority in and for said State of Alabama at Large, Mrs. J. C. Bohanon, and who being first duly sworn by me on oath doth depose and says the following:

My name is Mrs. J. C. Bohanon, wife of J. C. Bohanon, and we have 5 children still at home. My husband farms for a living, and our farm is located in Mobile County. at Chunchula, Alabama. We have had to borrow money for seed and fertilizer for this year's soy bean crop. We also have mortgages on our home and on our farm equipment. The notes on these obligations are due to be paid, in whole or in part, from the proceeds of sale of this Fall crop of soy beans. If we don't sell this crop of soy beans, my husband faces certain bankruptcy, and we will lose our farm and farm machinery which both of us have worked hard to keep.

The soy beans on our farm should have been harvested several weeks ago, but due to the delay in loading out grain from the Alabama State Docks warehouse into the grain boat BEL HUDSON, we could not cut or harvest the beans, since we have no farm storage, and the only place that our beans can be stored is the Alabama State Docks elevator,

and it was full, due to the BEL HUDSON's not loading (although it had been at the elevator since October 1, 1971). The result is that the beans are (63) shattering, that is, the soy beans are falling out of their pods on the ground and cannot be harvested or combined. We have already lost money on the beans that we were able to harvest and which were put into the Alabama State Docks elevator, due to a lower market price because of lack of storage. Yesterday the Farm Production man told us that he estimated that we had already lost 10-12 bushels per acre, because of shattering.

If no grain boat will come to Mobile, or if one does come and it is not loaded due to pickets or other labor strife, we will have no place to store our grain (since it is my understanding that the Alabama State Docks elevator will probably be full tomorrow, November 10, 1971), nor do we have enough equipment to put it anywhere else, and the result is that we will lose the majority of our crop of soybeans, the value of which we estimate to be $65-70,000.00.

The reason that this Affidavit is made by me, and not by my husband, is that as at the time I am signing this, he is running a combine, harvesting our beans and hoping that he can get a truckload to the Alabama State Docks elevator before it closes in his face and will not accept any more for storage.

Mrs. J. C. Bohanon

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(66) INTERVENOR'S EXHIBIT No. 3

AFFIDAVIT OF ROBERT C. MALONE

STATE OF ALABAMA)
COUNTY OF MOBILE)

Personally appeared before me, the undersigned authority in and for said State of Alabama at Large, Robert C. Malone, who being first duly sworn by me on oath deposes and says the following:

My name is Robert C. Malone. I live in Wilmer, Mobile County, Alabama, and I rent a farm of about 250 acres upon which I grow soy beans. I had to borrow money from the Merchants National Bank of Mobile ($2,600.00) to pay the landlord rent for this farm, and this note is now overdue, and I am paying interest on same. I also have borrowed $30,000.00 from F.M.C.C. on my farm equipment. This note is also past due, and I am having to pay interest on same. The reason the notes are past due and I am in default is that labor trouble caused a delay in the loading out of the BEL HUDSON, which had been at the Alabama State Docks elevator right under the spouts, ready to load since October 1, 1971. The State Docks elevator is the only facility for storing soybeans that we farmers have in this area, and when it gets full then we are in real trouble. I have no farm storage or bins within which to place my beans. I have already lost approximately $3,500-4,000.00 on the beans that I was able to harvest and get sold and stored in various places.

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My beans should have been cut 2 weeks ago. Their quality and grade is fast deteriorating, and if these beans are not harvested immediately, sold and placed in storage at the Alabama State Docks elevator (which is going to close tomorrow if it is not already closed today at the time I (67) am executing this Affidavit) I will lose my entire crop. I have agreed to sell my beans at the prevailing market price, but delivered in storage at the Alabama State Docks elevator, the only storage facility we have in this area.

Last night I took a load of beans and arrived at the elevator at approximately 6:30 p.m. There were 70 trucks in front of me, waiting to be unloaded. My truck was finally unloaded at about 1:55 a.m. this morning. It is only a matter of hours before the Alabama State Docks elevator closes its storage facilities to the farmers. I stand to lose approximately $12,000.00 if there is any labor strife or difficulty, strikes, picketing, etc., which keeps a grain boat from being at the Alabama State Docks elevator immediately, for immediate and continuous 24-hour loading. In other words, if the Alabama State Docks elevator can't store my beans, I can't sell the beans, they just stay in the field and rot.

I would estimate that there are approximately 150 farmers in Mobile County, Alabama, who grow soy beans, 75% of whom are in the same predicament that I have been put in by all of this labor trouble and particularly these union pickets.

Robert C. Malone

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(75) Mr. Perkel: At this point in time I wish to advise you that in the interest of expediting this matter, with a particular view toward its importance to all parties, the attorneys have reached various stipulations on factual matters for the purpose of this hearing which we hope will be of some aid.

The Court: All right, sir.

Mr. Perkel: Your Honor, pre-marked Exhibit is by stipulation admitted into evidence with the following statement: Picket signs such as this Exhibit C bore the names of the ILKON TAK, the BEL HUDSON, the PRESIDENT QUEZON, and the AQUA GLORY when the picketing occurred outside the gate of the Alabama State Docks; and when picketing took place within the Alabama State Docks, the signs bore only the respective name of the ship being picketed at that time. The second item is that pickets picketed outside all of the entrances of the Alabama State Docks for two days, and then picketed proximate to the ships, such as the gangway of the ILKON TAK, and at the gate of the bulk loading facility with respect to the AQUA GLORIA. The next item is that no demand for recognition was made by respondents upon the complaint or any of its members. Next is that complainant or intervenor have no knowledge as to the picketing not being peaceful, or whether there have been any threats—and I think there is a further elaboration on that by intervenor's attorney.

Mr. Lankford: Yes. Judge, we have no knowledge of whether there was or there wasn't any such threat or any such violence that occurred on any picket line.

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(76) J. R. MACPHERSON, the witness, called by the Respondents, having been first duly sworn by the Court to tell the truth, the whole truth and nothing but the truth, took the stand and testified as follows:

Direct examination by Mr. Perkel:

Q. State your name, please. A. J. R. Macpherson.

Q. I would ask you to take your affidavit which is in evidence as (77) Complainant's 5. (Witness complied.) I would ask you to address yourself to Page 8, if you would, please, particularly to the scratch-numbered paragraph—I can't quite make it out now—in the middle of the page, and the lettered items below it. Mr. Macpherson, can you tell me which members of the Association are losing in excess of $15,000.00 a day? A. This is information that has been given to our Association—our Steamship Association; I don't have the figures of the exact companies by name.

Q. Could you get it for us?

Mr. McRight: I would like to interject this objection: I think counsel has misread what was stated; what was stated was that the member companies of the Association are losing in excess of $15,000.00 per day. He is attempting to cross-examine this witness as to a meaning that each member of the Association is losing $15,000.00 per day. That's not what the statement says.

The Court: In overruling your objection, I will let the witness explain his answer if he wants to.

Mr. Perkel: Can you tell me how this figure was arrived at?

A. That figure was arrived at by calculating overhead of various stevedores and steamship companies, members of our Association have come up with, and they have no source of income at this time to pay for these overhead expenses and salaries producing no income.

Q. Can you tell me what day or what period of days this affidavit speaks of? What I am addressing myself to is this: I'm led to understand that one ship picketed one time, three ships picketed another time; so does this $15,000.00 figure speak to the time when one ship was picketed or when all ships were picketed? A. It pertains to any period that we are unable to work.

Q. So that it represents an average cost of all the picketing up and down now? A. Well, at the time this was prepared originally—there has been no work by the stevedoring companies since that time. One stevedore—and two, I suppose, both Walsh and Pate, have worked and it may have a slight bearing on the figure.

Q. Well, how many stevedores were included in this figure in the first place, and maybe we can figure it out, you know, how many— (78) A. I believe our list has ten.

Q. Were here ten vessels picketed? A. No, there were not ten vessels picketed.

Q. There were four vessels picketed at one time? A. Let me see; when the pickets were up at the gate, everything was blocked.

Q. I see. They are now not at the gate? A. Not at the gate. There are a few vessels, I believe, that are not picketed and they are being worked.

Q. Has your Association or have you calculated the cost to the members of the Association based upon the picketing

now being conducted proximate to the ships? A. Well, I don't think you can relate it to a ship basis; our pattern of trade is interrupted. We can't make a living on one ship a day and another ship two weeks from today; we deal in volume; we deal in twenty and thirty ships a month, and just because we are working one ship a day, that doesn't generate enough income or revenue to have any offsetting value.

Q. Could you give me some idea of how you arrived at the figure in d. of $3,300,000.00 per week—well, before we guess that one, how many ships do you know of being handled on a given day? How many berths—working berths have you got? A. At the State Docks?

Q. Yes. A. Twenty-seven berths.

Q. Is there a private facility that's not at the State Docks? A. There are two private facilities that are not located at the State Docks we can also work.

Q. And that twenty-seven includes all those facilities? A. Twenty-seven at the State Docks.

Q. At the State Docks. How many facilities do you have overall? A. Probably thirty.

Q. And aside from the first two days, I believe, when the picketing took place at all the gates of the State Docks, how many facilities have been tied up when picketing has taken place proximate to the ship? A. I don't understand your question.

Q. Well, we have thirty berths. How many berths were not working today (79) because of the picketing? A. Well, it's a difficult question to answer; because the picketing exists, no one wants to bring ships in here and have them tied up. As a matter of fact, I have a ship anchored —Strachan Shipping Company has a ship anchored on the

bar with 9,000 tons of steel; we won't bring it up to have it picketed—it would serve no purpose. There's another member that has a ship out there with cargo—

Q. Is that a Liberian flag ship? A. Both are Liberian flags. Why bring them up if they are going to be picketed?

Q. How many berths are working? A. How can they work under these circumstances?

Q. How many? A. I don't know if it's one grain berth or two grain berths that are working.

Q. But you have thirty facilities—thirty berths; how many of the thirty berths are working? A. Either one or two.

Q. You only have one or two berths working on the Port? A. Only the grain berths.

Q. How do you account for that Three Million Three a week? A. Those are taken from the Chamber of Commerce figures on the study that was conducted in the Mobile Area.

Q. I don't understand. The study of what? A. The study of the maritime industry—trade—I beg your pardon, I was referring to the wrong section.

Q. That's paragraph g. which starts on page 8. I was correct; that does pertain to the Chamber of Commerce study.

Q. Can you tell me when that figure speaks of? A. I don't have a date that it was filed; I cannot tell you.

Q. Was it compiled last year? A. I'm fairly certain it was compiled this year.

Q. This year? Relative to what? A. Relative to the maritime trade, the income that a vessel brings into the Port, money that would come into the Port if the normal trade was allowed.

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Q. This is the Chamber of Commerce's opinion? (80) A. No, sir, it's not an opinion; it's a study.

Q. The Chamber of Commerce's study? A. That's right.

Q. As to how much revenue was brought into the City of Mobile by the operation of the Port? A. I would like to clarify it a little further; the Chamber of Commerce itself did not make the study, they had an independent outside firm make this study of the Port; it was out of Mobile.

Q. Did they publish it? A. It's on file at the Mobile Chamber of Commerce.

Q. Did they publish it? A. I don't know.

Q. Did they make it available to the public? A. They would make it available. The Mobile Chamber of Commerce—

Q. Did they pay for this study? A. I don't know who paid for the study.

Q. Then this study which is on file at the Chamber of Commerce, which they freely let people see, this says, I gather, that the maritime industry brings in Three Million Three into the Port; is that correct? A. That's basically—

Q. Per week? A. I guess that's right.

Q. Now, you have a statement on here—g. on page 9—delayed, or said picketing will cause the estimated entire crop of approximately 13,000,000 bushels, valued at excess of $50,000,000.00—will be lost. Is this based upon the assumption that the soybeans must be shipped through Mobile? A. Yes, sir.

Q. Must they, in fact, be shipped through Mobile? A. Well, I'm personally not a soybean farmer; I don't know what all the conditions are. I do know this, that there are not ample inland facilities to store soybeans in this

area; the farmers here rely on the Alabama State Docks elevator, not only as an export elevator but as a location to store soybeans after bringing them out of the fields.

Q. Are you familiar with Pascagoula Grain Elevator? A. Yes, I'm familiar with Pascagoula Grain Elevator.

Q. Do you know what their present status is over there? (81) A. Yes, I do.

Q. What is it? A. They started working their first vessel last Sunday morning at 7:00 o'clock; they finished loading it at midnight Tuesday—excuse me, Monday night; they started the second vessel at 8:00 o'clock this morning.

Q. Do you know whether they can take more grain or not? A. I do know this, at one time they were filled. They have loaded one ship; they probably have space now for one ship.

Q. Would you have any reason to doubt me if I said that a call was made not more than twenty minutes ago to the grain elevator who said essentially they will take everything you can send me?

Mr. Lankford: I'm going to object to any kind of speculation of what—

Mr. Perkel: Your Honor, I will lay the foundation subsequently.

The Court: Sustained.

Mr. Perkel: Your Honor, on what basis?

The Court: On the basis that you are not testifying, and that there is no evidence before this gentleman of that proposition; the Court sustains the objection.

Mr. Perkel: May we interrupt the testimony of this witness and put somebody on for that purpose,

Your Honor? I will connect it later if you wish, but I would prefer to do it now.

The Court: On the ground that it would be immaterial as to whether this gentleman would be surprised or not, the Court further sustains the objection on the ground that it's not within his knowledge.

Mr. Perkel: You have knowledge where Pascagoula is, don't you?

A. Yes.

Q. Do you know where Wilmer is? A. Pardon?

Q. Wilmer, Alabama? A. Vaguely. I live in Baldwin County; I don't live in Mobile County.

Q. Would you know whether Wilmer is closer to Mobile than Pascagoula? A. I don't have a map, and I don't.

Mr. Perkel: No further questions.

The Court: Any cross.

Mr. Lankford: Yes, sir.

(82) *Cross-examination by Mr. Lankford:*

Q. Mr. Macpherson, would you know whether or not a farmer can even get trucks to haul to Pascagoula—haul grain to Pascagoula? A. No, I wouldn't.

Q. Do you know whether or not the elevator at Pascagoula is operated on a lease by Louis Dreyfus Corporation? A. I do know that Louis Dreyfus has a lease that at one time was for 99 years.

Q. And it takes whosever grain it wants to take, and pays whatever price it wants to pay if you want to take it to that elevator—

Mr. Perkel: I don't mind questions; I don't like testimony from counsel.

Mr. Lankford: I'm asking him if he knows, please, and let me finish my question—it's cross-examination.

The Court: Just a minute now; you have all been real nice; but it's getting late now. Even though it's cross, Mr. Lankford, I still consider that Mr. Macpherson is basically your witness, and on the ground that you are leading him, I sustain the objection.

Mr. Lankford: All right, sir. Do you know whether or not Dreyfus as a practical matter makes the operation of this elevator at Pascagoula its private elevator?

A. I know that for a fact.

Q. All right, sir. Now, do you know whether or not the elevator at Alabama State Docks is a public elevator? A. There's no question about it being a public elevator; it's got to be a public elevator.

Q. And do you know whether or not the first vessel you said was loaded at Pascagoula was a Liberian flag vessel? A. No, sir, that's not correct.

Q. It was a Liberian flag— A. No, sir, it wasn't.

Q. Do you know whether or not tomorrow morning representatives of respondent unions might go over and picket the vessel at Pascagoula that is supposed to be loading right now? I mean these unions that are in this Courtroom. Do you know whether or not they are going over there to picket that vessel in Pascagoula in the morning? (83) A. No, I don't know whether they are going or

not. From what counsel said a few minutes ago, I believe that we can look for some more picketing.

Q. Yes, sir. And do you know, Mr. Macpherson, whether or not these respondent unions—

Mr. Perkel: Your Honor, I must object at this point; this is really leading. I was sitting back and taking it because it really fundamentally is irrelevant, but it is getting late—

The Court: As to a question based upon the witness' lack of knowledge, the Court sustains the objection.

Mr. Lankford: Do I understand the Court to say that I can't ask him whether or not he knows?

The Court: If it's your thought that his answer would probably be no, he doesn't, the procedure would be of no value to the Court whatsoever because it would be two negatives.

Mr. Lankford: All right, sir. To your knowledge, Mr. Macpherson, are these respondent unions picketing New Orleans—the Port of New Orleans at the present time?

A. I know they did earlier. I think that they are being restrained from picketing over there. I don't know what the status is right now though.

Mr. Lankford: That's all I have.

The Court: Any redirect?

Mr. Perkel: No, your Honor.

The Court: You may step down. (Witness left stand.)

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(85) RESPONDENTS' EXHIBIT B

(Formerly marked and referred to by Mr. Perkel as "EXHIBIT E".)

TO THE PUBLIC

American Seamen have lost approximately 50% of their jobs in the past few years to foreign flag ships employing seamen at a fraction of the wages of American Seamen.

American dollars flowing to these foreign ship owners operating ships at wages and benefits substandard to American Seamen, are hurting our balance of payments in addition to hurting our economy by the loss of jobs.

A strong American Merchant Marine is essential to our national defense. The fewer American flag ships there are, the weaker our position will be in a period of national emergency.

PLEASE PATRONIZE AMERICAN FLAG VESSELS, SAVE OUR JOBS, HELP OUR ECONOMY AND SUPPORT OUR NATIONAL DEFENSE BY HELPING TO CREATE A STRONG AMERICAN MERCHANT MARINE.

Our dispute here is limited to the vessel picketed at this site, the SS

American Radio Association AFL-CIO
International Organization of Masters Mates & Pilots AFL-CIO
National Marine Engineers Beneficial Association AFL-CIO
National Maritime Union of America AFL-CIO
Radio Officers Union of the United Telegraph Workers AFL-CIO
Seafarers International Union of North America AFL-CIO

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RESPONDENTS' EXHIBIT C

AFFIDAVIT

Louis Neira, being duly sworn, deposes and says as follows:

That he is the Mobile Port Agent for the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Water Districts, an affiliate of the defendant, Seafarers International Union of North America, and makes this affidavit in opposition to Plaintiff's application for a preliminary injunction. So that the Court will have the complete background, facts and events leading up to and constituting the issue of which Plaintiff is complaining, and concerning that which it is requesting injunctive relief from this Court restraining the Defendants, deponent sets forth the following facts:

For many years the job opportunities for American seamen aboard American Flag vessels has steadily decreased and such decline has been and is accelerating. This condition is best demonstrated by official publications of the United States Government. The United States Department of Commerce, Maritime Administration, publishes an annual report of its administration. The most recent report is for fiscal year 1970. Such report inter alia sets forth total United States seaborne foreign commerce and the percentage thereof carried by American Flag vessels, contrasted with foreign flag vessels. Attached hereto and made a part (87) hereof is Chart No. VI of such report demonstrating the above percentages.

The foregoing chart illustrates that in 1947 the total tons measured in millions of tons of United States commer-

cial seaboine commerce was 142.2. For the year ending in 1969 said chart further illustrates that U. S. Commercial seaborne commerce increased to 427.79 million tons, an increase over 22 years of approximatley 300%. Notwithstanding such phenomonal increase in U. S. Commercial seaborne cargo, the percentages thereof carried by U. S. Flag vessels has steadily decreased and the foreign flag vessels carriage thereof has increased fantastically. The above mentioned chart again demonstrates that in 1947 U. S. flag vessels carried 57.6% of the aforesaid U. S. commercial seaborne commerce and in 22 years this carriage has been so decreased, that in 1969 the percentage was only 4.8; this status notwithstanding an increase of almost 300% in U. S. commercial seaborne commerce. Of course, conversely foreign flag vessels increased their percentage of transporting U. S. seaborne commerce from 42.6% in 1959 to 95.2% in 1969. And, most significantly, the above small percentage carried by U. S. foreign vessels in 1969, has been further diminished in the 22 months since the last official figure in 1969.

Relative to the number of seamen's berths or jobs aboard American Flag vessels, in 1947 there was substantially in excess of 100,000 such jobs. At the present time there are less than 31,000 such berths.

With respect to the ratio of seamen as an available pool to man such berths or jobs, to allow for vacations, leaves, illness, injury, and other reasons, bearing in mind the nature of the hazardous work, constant exposure to the sea, away from home and family, the approximate percentage is 2.2 to 2.4 seamen for every berth.

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Applying the foregoing ratio to the foregoing jobs demonstrates that in 1947 approximately ¼ million American seamen followed this occupation supporting themselves, their families, and their communities. With the foregoing loss of transports U. S. seaborne commercial cargo to foreign flag vessels, the American seaman has presently been reduced to approximately 65,000 to 70,000 persons, but more significantly rapidly decreasing at an alarming rate.

The primary reason for the loss of American seaman jobs transporting U. S. commercial commerce to the foreign flags, has been the (88) substandard wages and conditions of foreign seamen contrasted to American Seamen. For an example, an American unlicensed seaman, depending upon his rating, will earn approximately $1200 a month as well as accruing substantial vacation, welfare and pension benefits. Attached hereto as Exhibit F through J are American seamen collective bargaining agreements setting forth their wages, benefits and employment conditions. Foreign flag unlicensed seamen transporting U.S. commerce will earn between 10 to 15% of American seaman earnings with little or no fringe benefits. Some such foreign seamen earn less than $100 per month with no benefits. In fact within the past approximate dozen years or so, non traditional minor nations such as Liberia and Panama merely give their flag to non citizens owners and operators of vessels with crews of Asiatics and Western European officers and such foreign flag vessels transport U.S. seaborne commerce with the foreign substandard wages and conditions contrasted to those of American seamen.

There are presently tens of thousands of American seamen who because of the above foreign substandard wages

and conditions contrasted to Americans are unable to secure employment and many of them are residents of and normally would sail out of Mobile. Unless the foregoing frightening picture is changed, most of the remaining American seamen, if not the American flag itself, will be swept from the seas and U. S. seaborne commerce will be handled practically exclusively by these foreign seamen.

Suffice it to state, the effect of this present condition on our balance of payments, as well as upon our merchant marine fleet for defense, as a nation, has been most adversely affected.

The American seaman union representatives, the Defendants herein, met in late October, 1971, and agreed to institute a program to peacefully and truthfully picket foreign vessels in U. S. Ports to publish and protest the loss of their livelihood to foreign flags ships with substandard wages and conditions contrasted to those of American seamen; to call to the attention of all Americans the above terrible condition and of the need and sole object of the American seaman unions and present their job opportunities as seaman for themselves in the United States.

As a consequence, picket signs were prepared (Exhibit A-1), written instructions as to the conduct of the informational or publicity (89) picketing distributed (Exhibit E) and leaflets to be distributed (Exhibit B). The above protested informative or publicity picketing commenced in the Port of Houston on or about October 28, 1971, and has been extended to the Ports of Philadelphia; Mobile; New Orleans; Wilmington; California; San Francisco; Portland, Oregon; Seattle, Washington; and Duluth, Minnesota, and will be extended to other ports as well subject to financial resources.

Appendix M

With respect to the Port of Mobile, which is the subject of this action, the following transpired.

On Monday and Tuesday, November 1 and 2, 1971, your Deponent spoke to Mr. Bob Hope, the State Docks Supervisor, and advised him of Defendant Unions request for permission to picket foreign flag vessels berthed in the State Docks rather than in front of the gate so as to limit the dispute to the picketed vessel. Receiving no such permission, on Wednesday at approximately 1:00 P.M., 4 pickets carrying the above mentioned picket signs, (Exhibit A-1), walked outside the front of the gate. The signs specifically pointed out that the dispute was with the vessels named on the picket signs. The leaflets distributed by the pickets (Exhibit B) further mentioned that the dispute was limited to such named vessels. The vessels named were the foreign flag vessels, Aqua Glory—Liberian flag; Bel Hudson—English flag; Phillipine President Quezon—Phillipine flag; and Ailkon Tak—Liberian flag.

On Friday, November 5, 1971, permission was granted to picket alongside the vessels. The pickets left the front gate and then with the above picket signs and leaflets restricted to the Liberian vessel, Aqua Glory, two pickets walked alongside that vessel. And, 4 pickets with their picket signs and leaflets restricted to the Liberian vessel, Ailkon Tak, walked alongside that vessel and these are the only vessels picketed at the State Docks at the present time.

All picketing has been peaceful and in accordance with the instructions set forth in Exhibit E.

Based on my observations, some persons patronized the above picketed vessels while others did not.

It should be pointed out that while the above two Liberian vessels are loading American cargo, soy bean products,

two American ships, which employ American seamen and transport the same type of cargo are laid up across the way from this operation because of inability to (90) obtain cargo. They are the Overseas Joyce, laid up in Mobile for approximately 3 months, and the Vantage Horizon, laid up in Mobile for approximately one month. The primary reason for such lay-up of non-cargo availability is because of the substandard wages and conditions of foreign flag seamen as contrasted to those of American seamen.

The Defendant Unions and their representatives are peacefully and truthfully picketing the above vessels to protest the loss of American seamen's livelihood to foreign flag ships with substandard wages and conditions contrasted to those of Americans. We are interested in, and it is our sole objective, to preserve our job opportunities for ourselves as American seamen in the United States. We have a dispute with these foreign flag vessels here in our country. We are exercising our rights as free American citizens, under long and cherished constitutional guarantees. And, it is this protest and the exercise of our constitutional rights, which the Plaintiff herein is seeking to deprive us of by securing an injunction from this court.

Deponent is advised that counsel for the Defendant unions are submitting legal memoranda demonstrating our rights to engage in the above peaceful and truthful conduct as well as further legal authority to demonstrate that Plaintiff is not entitled to injunctive relief against our unions from this Court.

WHEREFORE, it is respectfully prayed that Plaintiff be denied its requested relief and that its complaint be dismissed.

Louis Neira

* * *

(91) Mr. McRight: Your Honor, we have an objection as to the contents of this affidavit similar to the objection that was made to two of the affidavits marked in by the Intervening Complainant.

The Court: The only difference I see, he is actually a party to it. The ones that they were making most of their objections to had to do with the financial condition of some soy bean people.

Mr. McRight: Yes, sir.

Mr. Lankford: If the Court please, the objection was made and the Court sustained it to the affidavit of Robert E. Malone, the Intervenor, the intervening complainant.

The Court: All right. I haven't read Mr. Neira's affidavit; let me see what it is that's objectionable.

Mr. Simon: Judge, Mr. Neira is a party-respondent in this case, in addition to being the business agent for the Seafarers Union.

Mr. Lankford: Well, maybe we can save all this, Judge—

The Court: Tell us what it is.

Mr. Lankford: I would like to inquire of Mr. Simon if he is going to present Mr. Neira as a witness.

Mr. Simon: Yes, sir, we plan to.

Mr. Lankford: Well, then this affidavit is inadmissible in any event, if the Court please; it's not the best evidence. Here we've got the man sitting right here.

Mr. Perkel: Well, we have the same thing with Mr. Macpherson.

Mr. Lankford: We didn't call Mr. Macpherson.

Mr. Simon: We are going to touch on other matters with Mr. Neira that have come up in this proceeding, if the Court please.

The Court: I'm going to overrule the objection to the affidavit. Do you want to read it?

Mr. McRight: In its entirety?

The Court: Well, if you have any particular objection to it—

(92) Mr. McRight: Yes, sir, we do. First of all, Your Honor, I would call your attention to what purports to be the sixth page; the statement made that he knows all statements and facts therein to be true and correct in all respects. There are a number of statements and facts in here that on the face of the affidavit it is clear that no one man could know the things he says he knows; and I would make that objection to the whole of the affidavit, realizing perhaps what Your Honor's ruling on that objection will be.

The Court: Overruled.

Mr. McRight: Now, specifically, as to the second paragraph, the second sentence, "this condition", vis-a-vis, the loss of job opportunities mentioned in the first sentence—"this condition is best demonstrated by official publications of the United States Government." That obviously is a conclusion of the witness; we would object to it.

The Court: Overruled.

Mr. McRight: All right, sir. As to the paragraph beginning at the bottom of page one and terminating approximately one-third of the way down on page two, is what purports to be a summary of the chart which is appended as or identified as an exhibit to the affidavit; I make the objection that the chart speaks for itself and any purported summary of what the chart says is objectionable.

The Court: Overruled.

Mr. McRight: All right, sir. As to the last paragraph beginning on page two, "The primary reason" and ending "contrasted to American Seamen", there's no predicate laid for this witness to express that, what amounts to an opinion.

The Court: Sustain the objection on the ground that that's information not within the knowledge of the affiant, and the Court's going to order that conclusion stricken from the affidavit.

Mr. Simon: Judge, I would like to be heard—what did you say?

The Court: On the ground that it's a legal conclusion of the witness, I sustain the objection.

(Whereupon, Mr. Simon presented argument to the Court in opposition to the Court's ruling.)

The Court: If you put Mr. Neira on as a witness and prove his qualifications, I will reconsider my ruling. On the face of it, it does (93) not appear that he is that eminently qualified.

Appendix M

Mr. McRight: Your Honor, my next objection goes to the first full paragraph on page three, first as to the first sentence beginning "There are presently" and ending with "normally would sail out of Mobile", on the grounds that it's vague, it purports to say something that it doesn't specifically say, and on the further ground that no predicate's been laid to state that.

The Court: Overruled.

Mr. McRight: All right, sir. As to the second sentence in that same paragraph beginning "Unless the foregoing frightening picture" and ending with "by these foreign seamen"; while I appreciate the color of that sentence, I think it's inadmissible, irrelevant, incompetent, there's a failure to lay the predicate, it's inflammatory—and I can name more if Your Honor—

The Court: On the ground that that statement is inflammatory and contains some irrelevant matters, the Court will grant your motion and—

Mr. Simon: Judge, may I be heard just a second?

The Court: Mr. Simon, I'm not sure it's within Mr. Neira's knowledge whether this country's going to survive or not—

Mr. Simon: Your Honor, he's not saying survive—

The Court: He says the American flag itself will be swept from the seas—

Mr. Simon: Judge, there's an exhibit that's already been admitted into evidence that sets out these things by the Department of Commerce.

Mr. Lankford: Excuse me, Mr. Simon; I thought these were just identified.

Mr. Simon: I thought we had already agreed that they would be admitted; I thought we had already stipulated that they would be admitted.

Mr. Lankford: No, sir. We were never asked to stipulate that these exhibits—

Mr. Perkel: I don't know what we're talking about.

The Court: I don't either. The thing about the American flag, the Court is going to sustain the objection to that. What else, Mr. McRight?

(94) Mr. McRight: The next full paragraph, "Suffice it to state"; with that predicate I think it's redundant; certainly there's no showing that this witness has a basis upon which to make the statement.

The Court: Overruled.

Mr. McRight: The next paragraph, Your Honor, beginning "The American seaman union representatives", ending on the next page "for themselves in the United States"; there's no basis that this witness knows that that's what, in fact, occurred.

The Court: Overruled.

Mr. McRight: All right, sir. Over to page five, in the paragraph in the middle of the page, "It should be pointed out"; we object to the first sentence, particularly insofar as it attempts to show why two American ships are laid up, again there's no basis shown that this witness knows why they were laid up because of inability to obtain cargo.

The Court: Overruled.

Mr. McRight: All right, sir. The last sentence in that paragraph, "The primary reason for such lay-up" and ending "as contrasted to those of American seamen"—

The Court: As to what the primary reason for something is, the Court considers that a legal conclusion; and I sustain your objection.

Mr. Perkel: Your Honor, may I be heard on that for one moment?

The Court; All right, go ahead.

(Whereupon, Mr. Perkel presented argument to the Court in opposition to the Court's ruling.)

The Court: Sustain the objection.

Mr. Lankford: Judge, may I be heard for just a minute? I realize you sustained the objection, but he has raised a point I would like to respond to.

The Court: Yes, sir.

(Whereupon, Mr. Lankford presented argument to the Court in response to Mr. Perkel's argument.)

The Court: I will get into that later.

Mr. Lankford: Yes, sir.

(95) Mr. McRight: All right. The last complete sentence on that page—

The Court: "We are exercising our rights as free American citizens—"; I think that invades the province of the Court. I believe that's the ultimate

question for the Court's decision; and on that ground, the Court sustains the objection.

Mr. McRight: And on the same ground, Your Honor, the next sentence which is at the top of page six.

The Court: On the ground that that invades the provin of the Court, and that's the ultimate question, the Court sustains the objection.

Mr. McRight: And we will object to the next complete paragraph beginning "Deponent is advised" and ending "from this Court", on the grounds that that is the ultimate question and invades the province of the Court.

The Court: I think that's a factual matter, that they are going to help the Court with their legal authority, and I overrule your objection. Anything further?

Mr. McRight: Not on this.

The Court: Do you want to read in the affidavit—

Mr. Lankford: May I just be heard briefly?

The Court: Yes, sir.

Mr. Lankford: I tried to follow Your Honor as closely as I could; I'll try not to be redundant. It's perfectly obvious, if it please the Court, that a great portion of this affidavit—and I refer to page one beginning with the second paragraph, "This condition is best demonstrated" and going on to "The United States Department of Commerce", the remainder of that paragraph; the last paragraph be-

ginning on page one and ending over on page two, is patently based on a U. S. Department of Commerce document which is not in evidence. How much else is based on it, I don't know, but that is plainly objectionable, if the Court please.

Mr. Simon: Judge, the main witness, Mr. Macpherson, in his deposition used figures coming from the Chamber of Commerce, which is not nearly as official as the U. S. Department of Justice. All through the application for an injunction and his affidavit supporting it. And if that was admitted by the Court, there's no reason that this should not (96) be equally admissible.

Mr. Lankford: There was no objection made to that, Judge. I again—the statement on page three where it talks about our international balance of payments and everything, we object to that.

Mr. Simon: Judge, we couldn't object to it because it was in their petition, sworn to by Mr. Mcpherson, the Mobile Chamber of Commerce figures.

The Court: Gentlemen, I'm going to do this; I'm not saying that every statement in here of Mr. Neira is going to be earth-shaking in the Court's decision, but I am going to say this; the procedure is supposedly informal. You know that most affidavits have hearsay in them; you know that. If the gentleman has taken the trouble to depose to this Court facts which he thinks will help the Court, and I believe that I may have some ability to disregard matters that I think are of no value, I'm going to let most of it in for what it's worth.

Mr. Lankford: All right, sir.

The Court: Do you want to read the affidavit?

Mr. Simon: I would like to try, sir.

The Court: All right, sir.

Mr. Lankford: Are you going to let him read the whole thing as though it's all admissible?

The Court: Except for what I sustained Mr. McRight's objections to.

* * *

(107) LOUIS NEIRA, the witness, called by the Respondents, having been first duly sworn by the Court to tell the truth, the whole truth and nothing but the truth, took the stand and testified as follows:

Direct examination by Mr. Perkel:

Q. Mr. Neira, would you give your name to the Reporter? A. Louis Neira.

Q. Would you tell us what your occupation is, Mr. Neira? A. I am the Port Agent of the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Water Districts.

Q. Where are you stationed? A. Mobile, Alabama.

Q. How long have you been Port Agent? A. Twelve years.

Q. What did you do prior to that, Mr. Neira? A. I was the Agent of Miami, Florida for two years; and prior to that I was an organizer and patrolman in the Port of Mobile since 1945.

Q. Can I go back before that? A. No, sir. Yes, you can, if you wish.

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Q. How long have you been associated with the maritime industry? (108) A. Since 1933.

Q. In many capacities? A. As a seaman; as a member of the strikes of the thirties; picket lines; as an organizer —voluntary organizer through the thirties and forties; went to war; come back into Mobile and was elected as an official in 1945.

Q. Mr. Neira, sometime at the end of October did you receive any communication from your Union concerning the picketing in question here? A. I did.

Q. Could you tell us essentially what information you received, what your instructions were, and stop at that point and then we will get on to what you did?

Mr. Lankford: We are going to object; it calls for obvious hearsay.

The Court: Sustained.

Mr. Perkel: Mr. Neira, I show you Respondents' Exhibit E for identification, and ask you to examine it.

A. This is a letter from—

Q. Have you examined it? A. Yes, sir.

Q. Are you familiar with it? A. Yes, I am.

Q. Could you tell us how you got it? A. I received that from Mr. George McCartney of New York who arrived in Mobile November the first at 3:00 P.M. to inform me that the policy was to go—well, we were going out and strike every foreign flag ship in the Port of Mobile. He gave me a copy of my instructions—

Q. Are those the instructions there? A. They are. He gave me some leaflets—

Appendix M

Q. Just a moment, Mr. Neira. I show you Respondents' Exhibit B for identification; is that the exhibit you referred to? A. It is.

Q. Yes. What else? A. And some packets.

Q. Picket signs? A. Yes, picket signs.

Q. I ask you if this is a facsimile of that picket sign? I'm showing (109) you Respondents' Exhibit A-1 for identification. A. It is.

Q. Then what did you do, Mr. Neira? A. I called a meeting with all the officials of the various Maritime Unions in the Port of Mobile.

Q. Did any of them advise you that they received similar calls?

Mr. Lankford: I object to his leading the witness; and it calls for hearsay, also.

The Court: Overruled.

Mr. Lankford: We except.

Witness: Mr. Malloy of the Marine Engineers Beneficial Association, District No. 1—

Mr. Lankford: Now, if the Court please—

The Court: Now, that would. I believe I see Mr. Malloy here in Court. Anything that Mr. Malloy said is hearsay.

Mr. Perkel: Will you tell us who was at the meeting?

A. Chuck Malloy, Robert Jordan.

Q. Could you tell us what you said at the meeting? A. We arranged—

Q. Now, Mr. Neira, listen to my question carefully. Could you tell us what you said at the meeting? A. I said

that we were going to picket the foreign flag ships in the Port of Mobile.

Q. And as a result of that meeting, will you tell us what happened? A. I had Mr. Malloy arrange a meeting with Mr. Robert Hope, General Manager of the Alabama State Docks, for the purpose of setting up picket lines under the gentleman's agreement that we had in the previous managements prior to the new one coming in.

Mr. Lankford: Naturally we're going to have to object to whatever gentlemen's agreement they had.

The Court: Sustained.

Mr. Perkel: Mr. Neira, when was this meeting?

A. Monday, 4:00 P.M., November the first.

Q. Was any action taken by your organization or the collective organization to your knowledge as a result of that meeting? A. What type action are you talking about?

Q. Was any action taken? (110) A. Other than we tried to make a meeting for that afternoon with the various officials of the Alabama State Docks.

Q. Did there come a time when you did start picketing? A. We started picketing Wednesday at noon.

Q. Did you send pickets out? A. Yes, sir.

Q. Will you tell me what you said to the pickets and what instructions you gave them?

Mr. Lankford: I object to that as hearsay.

The Court: Overruled.

Witness: My instructions to the pickets were that we were going to picket the Alabama State Docks, you were to carry these placards, you were

to take these leaflets with you, you were to speak to no one, and if anyone should ask you any question you were to simply give them a leaflet and continue your picketing.

Mr. Perkel: Did you explain to the pickets what the issue was about as you understood it?

A. Well, I did, but you can—

Q. What did you say to them? A. I told them that we were going to picket these foreign flag ships, and they told me it was about time due to the fact that the merchant seamen, especially the American seamen, is being put on the beach due to lack of berths, and I mean jobs, because the American operator cannot compete with a foreign flag ship in any type of cargo, irregardless what type it is.

Q. How many men do you have on the beach now? A. At the present time we have 357 men on the beach.

Q. How many did you have on the beach last year at this time? A. I would say in the vicinity of 200.

Q. And the year before? A. The same amount, about 200.

Q. Mr. Neira, how long does it take for a man to get a berth out of your hall now? A. Well, I would say in the neighborhood of 80 to 89 days.

Q. After he registers, 80 days to— A. From the day he registers, within 80 to 89 days.

Q. I will ask you, Mr. Neira, if you recall how long last year at this (111) time it took a man to get a berth out of your hall? A. I would say that in less than 30 days he could get a berth.

Q. Have you any recollection of the year before that? A. Prior to that he could get one any day.

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Q. Mr. Neira, I show you Respondents' Exhibit F marked for identification and ask you whether you can identify that for us? A. I sure can.

Q. Tell us what it is. A. That is the contract of the Seafarers International Union covering the freightships under contract with the SIU.

Q. Mr. Neira, I'm going to show you Respondents' Exhibits G, H, I and J, and just ask whether you are familiar with them. Don't go further than that. Are you, or are you not familiar with them, and any one you are not familiar with, just tell us which one that is. A. I'm very familiar with the NMU contracts.

Q. Would you identify them by letter. A. Exhibits H and G; I'm very familiar with those contracts. I'm not too familiar with I or J.

Q. Do you know whether these are in fact the contracts? A. They are.

Q. That is, G and H are in fact the contracts between the Unions and the operators? A. They are.

Q. Have you seen them before? A. I picked them up from the National Maritime Union.

Q. Now, with respect to the ARA and ROU, the American Radio Association and the Radio Officers' Union, J and I, respectively, have you seen these before? A. Yes, I have. I've seen them at Headquarters in New York; they've got a copy of all these contracts.

Q. Do they keep a regular file on that? A. Yes, they do.

Mr. Perkel: Your Honor, at this point I think for the purposes of this hearing, I would like to offer into evidence at this hearing for whatever

weight the Court deems to give them, Exhibits F, E, D, G, H, I, J and A-1.

The Court: I think they are nearly all already in, aren't they?

(112) Court Reporter: Except for E.

Mr. Perkel: I thought that they were offered and that there was a question in relation to them—

The Court: There's one there, instructions to the pickets; no predicate had been laid, but based on Mr. Neira's testimony at this time—is this (Respondents' Exhibit E for identification) what you gave your men?

Witness: No, Your Honor.

The Court: Are you familiar with that?

Witness: Yes, these are the instructions. We gave them the leaflets, and these instructions were not issued to the pickets.

The Court: Where did you get these from?

Witness: I received these instructions along with my leaflets from Mr. McCartney who flew in from New Orleans and brought the necessary documents for me.

The Court: And that was part of your picketing?

Witness: That's exactly right, Your Honor.

The Court: All right, thank you, sir. I believe that's the only one that's not in, Mr. Perkel; and you can mark it in, Mrs. Stowe.

* * *

Appendix M

RESPONDENTS' EXHIBIT E

(Instructions)

Your Union, along with other American Maritime Unions, has formed a Committee, to protest the loss of jobs to Foreign Flag operators transporting American Commerce and who operate such vessels at wages and benefits substandard to those enjoyed by American Seamen.

In support of this protest, these Unions are setting up publicity picketing around such Foreign Flag Vessels in American Ports.

Our organization will participate in carrying out this publicity picketing.

In connection with this activity, if the publicity picketing is to take place in your Port, the following instructions must be followed to the letter.

1. If the vessel is at a Terminal and access cannot be had alongside the vessel, request must be made to the (113) Terminal operator for the opportunity to picket alongside the vessel. If this request is denied, picketing is to take place at the entrance to the Terminal. Make a memorandum of your conversation with the Terminal operator.

2. There should be no more than 4 pickets at any one site, at any one time. Pickets must be instructed that all picketing must be peaceful and they must ignore any acts of provocation. Picket signs with the correct language will be furnished to your Port.

3. Your Port will be furnished with leaflets. All pickets are to carry a sufficient amount of leaflets which

they will distribute as they picket. Pickets must be clearly instructed that under no circumstances should they speak to anyone, and in answer to all questions, they are merely to hand the person a leaflet.

4. If anyone asks you, as Port Agent, or asks the pickets whether they should cross the picket line, no answer should be given, but instead the person should be handed a leaflet.

5. In response to any inquiries, from other Unions, to you or your representative at your Port, refer them solely to the language on the picket sign and give him a copy of the leaflet. Do No More. If any of the pickets are served with a legal paper, they are to call their Union Office immediately. They are not to speak to anybody else. In the event legal papers are served, you must notify your headquarters immediately.

6. Any and all inquiries directed to you from the Press or anybody else, should be referred to your Headquarters. Do not engage in any conversation with such persons.

7. No one has authority to change these instructions except upon specific written authority from your Headquarters.

• • •

Mr. Perkel: That's all I have, Your Honor.
The Court: Is there cross?
Mr. McRight: Yes, sir.

Appendix M

Cross-examination by Mr. McRight:

Q. Mr. Neira, do I understand that the purpose of your picketing here in the Port of Mobile—when I say "your", by that I mean all the Maritime Unions that are in fact picketing—is to publicize what you say on your placards and say in the handbills that you give out? A. We want to bring to the attention of the American citizens of this country the plight of the American merchant marine, and the only way we can do it is by making this type of demonstration in order that we can bring it to the attention of the public, for without this we wouldn't receive the TV coverage that we've gotten. The only people who we might (114) have contacted were those on the water front; but we were fortunate through the TV to bring this to the attention of every Mobilian in this area of this television station.

Q. All right, sir. Did you give any thought to issuing any public statements or prepared statements of any kind to the public? A. My instructions were on public statements that they, whoever wanted them, were to contact our national headquarters in New York and they would be very happy to supply them with any information they wanted.

Q. Do you know if in fact any such statements have been entered or rendered, Mr. Neira? A. To my knowledge, no, sir.

Q. All right, sir. Did you, Mr. Neira, and the Port of Mobile—the Unions here give any thought to making any public statement over the radio? A. We were instructed to give no reports or no statements.

Q. You just went out and picketed; that's the publicity that you were going to accomplish? A. Yes, sir.

Q. All right. Now, did you give any thought, Mr. Neira, as to what effect that picketing would have on longshoremen in the Port of Mobile? A. We gave thought that everybody, especially the 700 families of Mobile SIU people alone who have gone hungry because they haven't got no jobs on account of these foreign flag ships.

Q. All right, I understand your position, but let's go back to my question. Did you give any thought, Mr. Neira, to the effect that your pickets would have on the longshoremen in the Port of Mobile? A. What effect?

Q. That's what I'm asking you. Did you give any thought to it? A. We gave it no thought. We were just out there to inform the public of our plight.

Q. Well, would you consider longshoremen part of the public? A. We consider every human being.

Q. Yes, sir. Would you consider longshoremen a part of the public that you intended to inform? A. Oh, yes, sir, definitely.

Q. All right. Now, Mr. Neira, wouldn't it be fair to say that most Union men don't cross picket lines? (115) A. Oh, that's definite.

Q. Yes, sir. And you knew that when you put this picket line up, did you not? A. No, sir, I did not because we put the picket line up there and several hundred men—Union men crossed it every day.

Q. What about ILA, Mr. Neira? A. I don't know who they were.

Q. Sir? A. I don't know who they were.

Q. Have you witnessed the pickets in operation? A. Yes, sir.

Q. Have you seen any longshoremen cross the picket line? A. Yes, I did.

Q. Where was that? A. It was at the grain elevator.

Q. You had pickets at the grain elevator? A. No, we didn't have them; other people had them.

Q. Who had pickets there? A. I don't recall; there was no name on the picket.

Q. No name on the picket? A. No; that's correct.

Q. There were pickets up with no name to identify them? A. That's right.

Q. They were pickets of one of the respondents in this case? A. No, sir, they were not one of the pickets of the respondents.

Q. When was this, Mr. Neira? A. I believe it was Friday.

Q. Friday of last week? A. Yes, sir.

Q. And have you seen any longshoremen cross any picket lines that you established? A. To my knowledge, no.

Q. Isn't it, as a matter of fact, Mr. Neira, that you knew when you established these picket lines that longshoremen would not cross the picket lines? A. No, sir, we didn't.

Q. Sir? A. We did not.

(116) Q. Well, you had—

Mr. Perkel: I think maybe I can make counsel's life a little easier by making the following report to counsel; that we have had more than a reasonable hope and expectation based upon past practice of the longshoremen to not cross picket lines, and nobody was surprised when they did it; in fact, I must say that I think everybody involved fully expected long-

shoremen, if they agreed with us, not to cross the picket line.

The Court: Very well, sir.

Mr. McRight: All right. Now, Mr. Neira, at any time subsequent to the time you established your picket line, did you learn that there was an injunction against the longshoremen in the Port of Mobile and those acting in concert with them—

A. No, sir—

Q. Wait just a minute—from refusing to perform services for members of the Mobile Steamship Association?

Mr. Perkel: Objection—

The Court: Well, his answer was no, he did not.

Mr. Perkel: Well, I would like to—since we may pursue this along the line a little further—I would like to state to the Court that the terms of the injunction cannot be stated so simply, that there probably are conditions, as this Court is well aware, that, notwithstanding an injunction, people can still picket provided they don't picket for the unlawful purpose of the injunction—that is, longshoremen. If the Mobile Association, for instance, committed an unfair labor practice, you could have an unfair labor practice strike at the Docks today, notwithstanding the injunction. So, if counsel is going to refer to that, I would appreciate it if he would keep it within its own terms.

Mr. McRight: I'll be glad to.

The Court: All right, sir.

Mr. McRight: Mr. Neira, you knew there was an injunction against ILA in the Port of Mobile, didn't you?

A. When?

Q. Right now, sir. A. Right now?

Q. Yes. A. Yes, I do.

(117) Q. And when did you know that—when did that first come to your knowledge? A. It come to my knowledge Wednesday in the afternoon.

Q. All right, sir. Now, at that time did you take it upon yourself to learn the terms of the injunction? A. No, sir.

Q. Did you read it? A. No, sir.

Q. Did anyone in your organization read it? A. To my knowledge I wouldn't know that.

Q. What was your understanding from what you read about the injunction, Mr. Neira, as to what it said? A. I was too busy trying to get a meeting with the State Docks operators to put my own picket line up there. I had been trying—

Q. You didn't understand at all— A. No, sir, I had been trying for thirty-six—

Q. —the terms of the injunction? A. —hours from Monday until Wednesday to get permission to picket dockside. I didn't have time to worry about the longshoremen.

Q. Then you have gotten that permission, or you have started picketing dockside—

Mr. Perkel: Your Honor—

Witness: We did not get the permission—

The Court: Just a minute; Mr. Perkel has an objection.

Mr. Perkel: I object on the ground of relevance. I would very much like that this matter be relevant in this case as I am quite certain that if counsel is going to prove what I can't prove with the longshoremen, then he has also proved that this Court is obviously preempted from jurisdiction because as before it has no right to enforce the order. But other than that, I don't see the relevance of that in light of my prior statement as to this part of the questioning.

The Court: He has the right to a thorough and sifting cross examination, and the Court overrules your objection.

Mr. McRight: All right, sir. Now, when you started picketing dockside, did this free your time so that you could learn what the injunction said?

A. That was Friday; yes, sir.

(118) Q. Yes, sir. Have you learned? A. Well, I know that they issued the injunction against the longshoremen.

Q. What is your knowledge of what that injunction says? A. Well, when the Judge tells me I can't picket, that's it, period—unless I want to go to jail for contempt.

Q. All right, sir. What about—what is your knowledge of the injunction as it applies to the longshoremen? A. I don't understand your question. I don't know what you're trying to get at.

Q. Well, that's not for you to decide right now, Mr. Neira. What I'm trying— A. Well, I think it is. I've got to answer it.

Q. Okay. Well, you answer my question and we will get to what I want to get at.

Mr. Simon: Judge, he's arguing with the witness.

The Court: Don't you all argue, Mr. McRight—

Mr. Simon: Mr. McRight is arguing, Judge. Anytime he has asked Mr. Neira a direct question he has gotten a direct answer.

The Court: Restate your question, Mr. McRight.

Mr. McRight: All right, sir. Mr. Neira, my question to you is, what is your understanding of what the injunction against the International Longshoremen's Association in the Port of Mobile entered last Wednesday said?

A. Last Wednesday?

Q. Yes, sir. A. I didn't read Wednesday's paper.

Q. Okay. Whenever you read it, what is your understanding of what the injunction said? A. My understanding according to Judge Hand was that they were supposed to go back to work.

Q. All right, sir. And you put up a picket line at the State Docks with the understanding that Judge Hand had told the longshoremen to go back to work, and with your understanding and belief as stated by your counsel that your picket line would prevent them from coming back to work; is that correct? A. My attorney said it would prevent them from going back to work?

(119) Q. That they anticipated that picket line, and hoped that they would not cross— A. I don't know how he knows that. He's just assuming that a good Union man will not cross nobody's picket line.

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Q. Mr. Neira, you assumed that a good Union man wouldn't cross your picket line before you put it up, didn't you? A. Yes, sir.

Q. All right, sir. And you assumed, too, did you not, that the ILA had good Union men in its ranks here in the Port of Mobile? A. Yes, sir.

Q. All right. Now, my question to you again is that with your understanding of Judge Hand's order, that it required longshoremen to go back to work, is it your testimony that the six respondent Unions here established picket lines when, in fact, you assumed that the picket line that you established would prevent those employees from going back to work?

The Court: On the ground that I don't believe I understand the question, I'm going to sustain an objection to it.

Mr. McRight: All right, sir. I'll rephrase it.

Mr. Layden: Judge, is he saying—

The Court: Well, I didn't understand it—

Mr. Layden: The witness can't understand, he says, at what time; because apparently the picket lines were up before there was any injunction. So if he will be specific, he can get an answer.

Mr. McRight: Okay. Mr. Neria, when did you come to the understanding that Judge Hand's order told the International Longshoremen's Association here in the Port of Mobile to go back to work?

A. About three hours after I established my picket line.

Q. All right, sir. Now, at that point did you put up or leave up any pickets? A. I left the pickets up until midnight that night.

Q. All right, sir. And has picketing continued since that time? A. Yes, it has.

Q. Okay. Now, from that moment on, that is three hours after you learned or after the injunction was issued, until now do I understand you to say that your Union and the other Unions that are respondents here established a picket line knowing and believing that ILA men would refuse (120) to cross that picket line, when you knew that Judge Hand had told those people to go back to work? A. No, I don't know about that because when we established our picket lines we didn't ask nobody to cross the picket line or not cross that picket line, and I do know that a bunch of ILA men up at the State Docks did cross the picket line. So I don't know what you're getting at. I mean, there's a bunch of ILA men crossing that picket line every day up there.

Q. These are employees of the Alabama State Docks? A. I don't know anything about that. All I know is that members of the International Longshoremen's Association are crossing our picket line every day.

Q. You mean to tell me that you know which Union they are in, but you don't know who they work for? A. All I know is that they are members of ILA's Union, period. I do know that.

Q. Are any longshoremen crossing your picket line? A. I beg your pardon?

Q. Are any longshoremen crossing— A. I don't know.

Q. Yes, sir. Mr. Neira, do I understand that your pickets now are directed at Liberian vessels? A. Yes, it is.

Q. Isn't it true that you've received instructions to picket all foreign vessels? A. Within my resources.

Q. Sir? A. Within my resources.

Q. Well, there are other foreign vessels at the Alabama State Docks, though, aren't there? A. I couldn't tell you.

Q. Is it your instruction to picket English vessels? A. My instructions were to picket foreign flag ships.

Q. All foreign flag ships? A. All foreign flag ships. But we also investigated, and when we found out that these foreign flag ships, such as the Bel Hudson—I'm sure that's who you are talking about, an English flag ship, when we (121) found out that the nationals aboard that vessel were all English, we removed the picket line from it. When we found that the Philippine President Quezon was a Philippine flag ship with all Philippine nationals aboard her, we removed the picket line from that. When we found out that the Aqua Glory, a Liberian runaway with a bunch of Greeks on there working for about Forty-Five bucks a month, we kept the picket line there.

Q. All right, sir. In other words, you reached the independent conclusion in the Port of Mobile that you were going to picket only foreign vessels that had crews different from the flag of the vessel? A. I would assume that would be right.

Q. Yes, sir. Now, in your affidavit, Mr. Neira, you indicate that there are two Liberian vessels loading soy beans in the Port of Mobile; is that correct? A. Two Liberian vessels loading—

Mr. Perkel: Would you indicate the page number, please?

Mr. McRight: Page five. You state that it should be pointed out that while the above two Liberian

vessels are loading American cargo, soy bean products, two American ships, which employ American seamen and transport the same cargo are laid up across the way from this operation. Now, is that a correct statement?

A. I don't believe they were loading. They are available to load. (Read document indicated by counsel.) No, I can't say there are two Liberian ships, although I see it right here. There's a typographical error in that area, because you have two ships here who could pick up that load. That's what you get for not reading it.

Q. So the two vessels that we refer to then are not Liberian flag vessels, are they?

Mr. Perkel: Which two vessels? Here we have—
Mr. McRight: Excuse me. I'll rephrase it—
Witness: Are you talking about the Aqua Glory?

Q. Yes, sir. You're not saying, are you, that there were two Liberian vessels loading soy beans at the time you made this affidavit? A. No. But that affidavit says it though.

Q. That's a mistake, I think you said. A. It would be pointed out while the two Liberian vessels are preparing American cargo, soy bean products—was the way I remember it.

(122) Q. All right, sir. But my point is—my question is to you, there are and have been no Liberian flag vessels loading soy beans at the Port of Mobile? A. To my knowledge, no.

Q. Now, Mr. Neira, you are familiar with the type flag vessels that call at the Port of Mobile? A. Oh, yes.

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Q. What percentage of the vessels that call here at the Port are of foreign flags? A. I would say about 70 to 80 percent.

Q. Yes, sir. And it's your instructions from your International Headquarters to picket 70 or 80 percent of the vessels that call at the Port of Mobile? A. Within my resources, yes, to picket every one.

Q. All right, sir. And you would assume, as a man knowledgeable in the field of labor picketing that good labor men and good Union men would not cross those picket lines? A. We were hoping that they wouldn't do that.

Q. Yes, sir. And this hope has been fulfilled in the Port of Mobile as far as longshoremen are concerned, isn't that true? A. Well, to a point, yes.

Q. Now, would it not be then a fair conclusion to say that you had hoped and do hope that you will be able to prevent 70 or 80 percent of the vessels in the Port of Mobile from loading or from unloading cargo? A. My hope is to clutter up the Port of Mobile with foreign flags—Liberian, Panamanian ships—to bring sufficient pressure on the United States Government to do something about the American merchant marine.

Q. That's your intention? A. Yes, sir.

Q. That's your purpose? A. Yes, sir.

Q. Have you attempted any meetings with representatives of the International Longshoremen's Association within a week prior to the initiation of your picketing? A. No.

Q. You stated in your affidavit that certain other ports have been picketed, Mr. Neira. Do you know if the longshoremen in those ports were (123) working at the time

the pickets were established? A. You say if I know that the longshoremen were working in the particular ports that's in my affidavit—were working when we established picket lines?

Q. Yes, sir. A. No, I don't know.

Q. Do you have any information as to that? A. No, sir.

Mr. Perkel: I would like to report to counsel on that.

The Court: Well, later; but let's finish with Mr. Neira first.

Mr. McRight: Mr. Neira, did you give any thought to putting your picket lines up to publicize your plight after the call-out times of longshore workers?

A. No, sir.

Q. Did you give any thought to taking down your picket line five minutes before and five minutes after the call-out time for longshore labor? A. No, sir.

Q. Couldn't you still accomplish your objective of publicizing the plight of American seamen— A. No, sir.

Q. —by leaving your pickets or not putting your pickets up within ten minutes before and after or five minutes before and after the ILA call-out time?

Mr. Perkel: Now, that, Your Honor, is pure conjecture, of course, on the part of the witness.

The Court: Overruled.

Witness: Why put up picket lines if you're going to knock them down every fifteen minutes? I mean, the purpose of the picket is to let the people

know, and the only way you can do it is with just the type of picketing we're doing. We're fighting for our lives, that's what we're fighting for.

Mr. McRight: All right, sir.

A. While you're fighting for your client, we're fighting for our bread and butter.

Q. Yes, sir. A. And that's the way we're going to do, the best way we know how.

Q. Yes, sir. I understand that, and I make no quarrel with you there, (124) Mr. Neira. The point I'm trying to make is— A. That's true, too.

Q. All right, sir— A. In World War II, only American ships were out there—it was our American seamen dying. Now that the wars are over, there might be American seamen that die on the beach while they take all the gravy and all the profits and all the cargoes out of this country. That's our purpose. We like to live just like anybody else.

Q. Your purpose is what, sir. To publicize, is that what you're saying? A. Exactly. And to live.

Q. In other words, you can't publicize unless you keep people from working? A. Well, you know, I've got a lot of people out of work, too. I sympathize with them, but I've gotta sympathize with my people stronger.

Q. Yes, sir. Why don't you put your pickets at places that don't interfere with the longshoremen?

Mr. Perkel: Your Honor, this shows an incredible ignorance of what a picket line is supposed to do. We admit, we plead, we say for our local unions to be put the most officacious place possible to produce the direct result, to stop the ship if we could,

to get everybody to read the sign—"We do not patronize this vessel"; we meant it.

The Court: All right, now, Mr. Perkel, you are testifying, but you are a visiting lawyer here and we like to extend you every courtesy.

Mr. Perkel: I apologize, Your Honor.

The Court: But we may have to put you under oath, now, if you don't watch out. Mr. McRight, are you about through?

Mr. McRight: Yes, sir, I've got one more question.

The Court: All right.

Mr. McRight: Mr. Neira, do I understand you to say that the object of your picketing is to force members of the Mobile Steamship Association to cease doing business with owners and operators of foreign vessels that call at the Port of Mobile?

A. No, sir.

Q. What is the object of your picketing? A. To get the attention of the American people as to the unfortunate (125) position that a great nation like ours finds itself in, especially in the maritime industry. Here we are yesterday No. 1, today No. 7, and going down every day. Just in Port of Mobile alone 15 ships were sent to China to the boneyard. Over 70% of your American fleet is 20 to 25 years old, and we were just fortunate in 1970 to enact the Merchant Marine Act so that we would get new ships and new blood, but that's not sufficient. We've done other ways. We've cut our crews 7 men off each ship hoping that we can compete with foreigners. They've built auto-

mated ships; they've put them with 16-men crews hoping that would be the answer. But a ship is nothing without cargo. That's all our intentions are. We just want a fair share. Congress says we're entitled to 50%; we're getting 4.8; we would be satisfied with 30, but unfortunately nobody bleeds for the merchant seaman. They think he's still the bum of yesterday; he's not; he's a respectable citizen of this community—married, the father of children and trying to raise them and send them to college, like I did mine. That's all we want.

Q. All right, sir. But you realize that your picketing is keeping members of the Mobile Steamship Association from loading and unloading these vessels that you are picketing, do you not? A. That is not the purpose of our picket line.

Q. No, sir, I didn't ask you the purpose. You realize today that your picketing is preventing members of the Association from loading and unloading these vessels that you are picketing? A. I hope that my picket line will shut the whole State Docks down and let everybody go home for a while. I hope I can do that. Not just the Mobile Steamship Association.

Mr. McRight: That's all.

The Court: Mr. Lankford, do you have any cross?

Mr. Lankford: Yes, sir.

Cross-examination by Mr. Lankford:

Q. Mr. Neira, I believe you said Mr. McCartney came in on November 1? A. Yes, sir.

Q. And gave you these pamphlets and posters—gave you a supply of them? A. Yes, sir.

Q. Did he fly in from New Orleans? (126) A. Yes, sir.

Q. And he brought all these pamphlets with him? A. Yes, sir.

Q. Didn't he give you any letter of instructions or anything besides this exhibit of instructions? A. No, sir, those were the only instructions.

Q. Nothing else in writing, is that correct? A. That's correct.

Q. Did he give you any money to accomplish these purposes? A. No, sir.

Q. All right, sir. Now, you set your pickets up—you referred to a Wednesday; that's November the 3rd, 1971, is it not, sir? A. That's correct.

Q. That's the day that Judge Hand's order came out, wasn't it? A. I believe it is; I'm not sure.

Q. And you said you got some television publicity, is that right? A. Yes, I think it was on the television—Channel 10 and Channel 5—I wasn't at home.

Q. Channel 10 and Channel 5. Did you get it the day you put your pickets up and the ILA longshoremen wouldn't cross the pickets? A. No. I didn't see the—I was told about the television coverage. I didn't see it so I don't know what was on there.

Q. Were you pleased with— A. They told me that there were men on the picket line carrying our pickets.

Q. Yes, sir. Were you pleased with the television publicity you were getting? A. No, I'm not pleased with nothing like that, but it's unfortunate that's a tool of the trade.

Q. Yes, sir. Do you recall seeing on television the farmers' plight as to how they were going to store their grain when the elevator was full and wouldn't take it? A. No,

because he didn't bleed for the seaman. I didn't hear him say nothing about the poor seaman being out of work. You know to get sympathy you got to show some.

Q. You have no sympathy for the farmer then, do you? A. Oh, yes, I have.

(127) Q. Oh— A. I have a lot of sympathy for the farmer.

Q. Well, did you have sympathy for the farmer when you set your pickets up and delayed the loading of the Bel Hudson for two days, the grain elevator was full, and their grain was out rotting in the fields, Mr. Neira?

Mr. Layden: Judge, that sounded like he's testifying. Now, whether or not he expresses wisdom or sympathy is not an issue.

The Court: Sustained.

Mr. Layden: There's no jury here for him to impress.

The Court: All right. Go ahead, Mr. Lankford.

Mr. Lankford: All right, sir. You picketed the entire State Docks for two days, didn't you?

A. From Wednesday noon until Friday morning.

Q. All right. You had pickets at every conceivable land surface entrance to the Alabama State Docks, didn't you? A. Yes, sir.

Q. And as you first testified, you struck the whole Docks for two days, the first two days?

Mr. Perkel: Objection; the witness hasn't testified he struck anything.

The Court: Sustained.

Mr. Lankford: He may not have intended to, but he did.

Mr. Simon: Judge, counsel have already stipulated to all this. Why is Mr. Lankford going over it again?

The Court: Sustained.

Mr. Lankford: But yet you had every entrance to the State Docks picketed for two days, didn't you—

A. Yes, sir.

Q. —November 3rd and November 4th, is that right?

A. That's right.

Q. And this picketing delayed the loading of the Bel Hudson those two days, didn't it, because the ILA wouldn't cross the picket lines, is that correct, Mr. Neira? A. I don't know if it delayed her or not; she's been there since October the 1st, and we just got on the line November the 3rd, so now whether that delayed it or not, I wouldn't know.

(128) Q. Well, you know for a fact, don't you, Mr. Neira, that the ILA longshoremen refused to load the Bel Hudson for two days because of your pickets?

Mr. Perkel: Your Honor, obviously counsel has forgotten. There is a stipulation in the record that vessels carrying grain out of this Port, such as the Bel Hudson and the President Quezon, refrained two days from loading soy beans from Alabama State Docks because individual members of the ILA refused to cross the picket line.

The Court: I believe that is repetitious, Mr. Lankford.

Mr. Lankford: All right, sir—

Mr. Perkel: Obviously.

Mr. Lankford: Mr. Neira, to your knowledge, does the SIU have any labor dispute or labor grievance with the farmers of Mobile County?

Mr. Perkel: Objection, Your Honor; that is a term of art, and if he wishes to use it, a labor dispute and a labor grievance is one thing under the National Labor Relations Act; it's one thing under your State law (unintelligible). I would suggest that if he would define the problem, we might be able to answer the question.

The Court: Sustain the objection.

Mr. Lankford: Does the SIU to your knowledge have any kind of labor agreement—working agreement with any of the soy bean farmers in Mobile County?

A. Not to my knowledge.

Q. All right. Do any of the other Unions have any such agreement relating to time of work, hours of work, or any kind of working— A. I cannot speak for the other Unions because I don't know.

Q. Well, excuse me. I thought you testified to these other Union agreements just a minute ago, Mr. Neira— A. Oh, you're talking about the NMU, the Masters, Mates and Pilots, and those in that—

Q. Yes. A. To my knowledge they have no contract with the soy bean farmers.

Q. They don't have any contract with them, do they? A. Not that I know of.

Q. They don't have any labor disputes that you know of—

Mr. Perkel: Objection Your Honor—

Mr. Lankford: Let me finish, please.

(129) The Court: Let him finish—but he objects to the term "labor dispute", Mr. Lankford; he says it doesn't have a specific meaning to it; and I've already ruled that it was objectionable.

Mr. Lankford: All right. Do you to your knowledge, or any of the Unions who are respondents in this cause have any kind of dispute or disagreement relative to working conditions or wages with any soy bean farmer in Mobile County, Alabama?

A. Oh, I can't answer that because I don't know who picks his peas or how much he pays them; I don't have any knowledge of that.

Q. You know of no such dispute or disagreement, do you, Mr. Neira? A. No, I don't.

Q. And certainly the SIU doesn't have any dispute or disagreement— A. We've got peapickers but they don't pick beans, you know.

Q. SIU has no disagreement or dispute with them, do they, Mr. Neira? A. No, sir.

Q. All right. The AQUA GLORY—did I understand your testimony that she was ready to take a cargo of soy beans? A. No, sir. She has, I understand, about 2,000 tons of cargo left in her.

Q. That cannot be discharged? A. I don't know.

Q. Well, let's put that in another way. How long have you been picketing the AQUA GLORY, Mr. Neira? A. Since November the 3rd about 12:00 o'clock.

Q. You had your pickets down there from what hours to what hours from those days forward? A. Well, on the first day we went from 12:00 noon to 12:00 midnight; the following day we went from 6:00 o'clock in the morning until midnight; and we've been continuing on that schedule.

Q. And have you been at the side of the AQUA GLORY and seen your pickets there during this time? A. I have.

Q. Have you observed ILA longshoremen reporting to work on the AQUA GLORY and refusing to cross your picket lines? A. No, I have not.

Q. You've never seen this happen, is that correct; is that your testimony? (130) A. That's right.

Q. But you know and your understanding is that they have refused to discharge those few remaining tons of ore from that vessel, the Aqua Glory, because of your picket line, haven't they, Mr. Neira? A. Yes, I do know that.

Q. And you intend to keep it that way unless you are ordered to do otherwise, don't you? A. Unless I'm ordered to do otherwise, I'll keep it there forever.

Q. All right, sir. Are any of your pickets members of the SIU? A. Any of my pickets?

Q. Yes, sir. A. Oh, yes.

Q. Are they all members of the SIU? A. There are pickets at the coal tipple who are members of the Seafarers International Union.

Q. Yes, sir. Are any of them members of the NMU? A. Yes.

Q. Of the Radio Operators? A. No, there's none on, Radio Operators, at the present.

Q. Masters, Mates and Pilots? A. Yes.

Q. You do have some pickets from the Masters, Mates and Pilots? A. Oh, yes, sir.

Q. MEBA? A. MEBA, District 1.

Q. Did you have any of your pickets on three months paid vacation while they were picketing? A. I don't understand that question.

Q. Did you have any of your men who were on their three months vacation which had already been paid them while they were picketing the Alabama State Docks?

Mr. Perkel: Your Honor, "your men" is kind of an ambiguous term here. There's the ROU, ROA, MEBA, SIU and NMU; which is "our men"?

The Court: Clarify it, Mr. Lankford.

Mr. Lankford: I understood the gentleman testified for all of them. Did you have any of your pickets, members of the NMU or SIU, your pickets, since you apparently are directing this, who were on their paid (131) vacation period while they were picketing?

Mr. Perkel: I would suggest that that question be put as a simple question: What is it he's directing?

The Court: Overruled.

Mr. Lankford: Do you remember the question?

A. Am I directing this strike?

Q. No, sir. That was your own lawyer's suggestion. Do you want the Reporter to read the question back to you, please? A. Please do.

Court Reporter: "Did you have any of your pickets, members of the NMU or SIU, your pickets,

since you apparently are directing this, who were on their paid vacation period while they were picketing?"

Mr. Perkel: I would also like to rise now and object on the ground of irrelevancy.

The Court: I think it's irrelevant whether the gentlemen were being paid or not; sustain the objection.

Mr. Lankford: All right, sir. Mr. Neira, you say you observed your picket lines at the AQUA GLORY. Were they situated so that Exhibit A-1 would be shown to the crew of the vessel who were still aboard her?

A. Oh, yes, I'm sure it would.

Q. You got as close to the side of the vessel as you could, didn't you? A. No, we stayed away from it because it's a nasty place over there—

Q. At the tipple? You didn't want to get dirty? A. Right. We don't want our pickets to get dirty, so we put them down about a hundred feet from the vessel.

Q. But the crew from the AQUA GLORY that you all didn't want to get dirty would pass by your signs? A. Oh, yeah, coming and going.

Q. Right. And you wanted them to see your signs, didn't you? A. Well, that's what we were there for.

Q. Right. And you want these crews on these foreign flag vessels to react against these foreign flag owners and make those owners raise those wages of those crews, don't you? A. That would be nice.

Q. Isn't that one of your purposes, Mr. Neira? (132) A. No, sir, that is not our purpose. Our purpose is to help

ourselves, the American seaman. That's the guy we're interested in, the guy we've got to feed, but if he can benefit out of that, that's fine. But we are interested in the American sailor.

Q. All right, sir. But if these men benefit from this on these foreign vessels and go to their owner and make their owner raise their wages to the point where those owners have to pay equivalent wages to the American seamen, that's what you want, isn't it, Mr. Neira? A. Yes, sir.

Mr. Layden: Judge, he has already answered that. He's gone into that.

The Court: His answer was yes that it was.

Mr. Lankford: All right, sir. And so part of your object in this is to cause friction between seamen on foreign flag vessels and their owners to the point that those owners will raise their wages, isn't that true, Mr. Neira?

A. No, it is not.

Q. Sir? A. No, sir, it's not.

Q. But if a man has to pass these signs back and forth several times a day, he's going to get some message, isn't he?

Mr. Perkel: I request that he stop arguing with the witness, please.

The Court: Sustain the objection.

Mr. Simon: And he's leading him, too, Judge.

Mr. Lankford: Mr. Neira, you are not going to let them clean out those remaining 3,000 tons on the AQUA GLORY so that she can be cleaned and shifted to the Alabama State Docks grain elevator—

(Mr. Perkel stood.)

Mr. Lankford: Let me finish my question, may I?

The Court? All right, go ahead; let him finish.

Mr. Lankford: You are not going to let the AQUA GLORY be discharged of a few—3,000 tons of cargo and then be shifted a couple of berths south and be put under the Alabama State Docks grain elevator to receive a cargo of grain, no matter how desperately the farmers need the storage space in the grain elevator at the Alabama State Docks, are you?

(133) A. No, because I would rather shift it—

Mr. Perkel: Just a moment, Mr. Neira. The first objection is that it's totally argumentative—

The Court: Sustained.

Mr. Perkel: It's impertinent.

The Court: Sustained.

Mr. Lankford: Mr. Neira, you are trying to prevent the AQUA GLORY's last remaining cargo from being discharged and her being used to carry cargo of grain, aren't you?

A. Yes.

Q. All right. And you don't want the AQUA GLORY to receive any cargo of grain in the Port of Mobile, do you? A. I don't want her to receive no kind of cargo, not just grain.

Q. But the Port of Mobile is your bailiwick and that's the one you're particularly interested in, isn't it? A. Well,

that's true, too, yes; but I also have to look to the rest of the country as part of our bailiwick, also.

Q. Right. And if the farmers get hurt, then that's just tough, isn't it?

Mr. Perkel: Your Honor—

The Court: Sustain the objection. That's argumentative, Alec.

Mr. Perkel: Your Honor, I would appreciate—maybe I am getting a little tired of rising up and down for argumentative questions; I object and request that counsel be cautioned.

The Court: I wish you would just confine it to a factual situation; it's so much more impressive.

Mr. Lankford: All right, sir. That's all.

The Court: All right. Any redirect?

Mr. Perkel: Yes, Your Honor.

Redirect examination by Mr. Perkel:

Q. Mr. Neira, is your authority in this picketing situation limited in any way?

Mr. Lankford: Object to the form of the question; leading, suggestive, calls for a conclusion.

The Court: Overruled.

(134) Mr. Lankford: We except.

Witness: Yes, it is.

Mr. Perkel: Can you tell us what your authority is in this strike, as you have described your picketing?

A. As the official of the Seafarers International Union, in conjunction with the officers of the other Unions, of

which Mr. Chuck Malloy is the coordinator, to receive our instructions, and information comes through Mr. Malloy who acts as the coordinator for this particular situation we've got here in Mobile.

Q. You received this set of instructions, now Respondents' Exhibit E. Have you the power to vary or alter any of those instructions on there?

Mr. Lankford: Same objection.

The Court: Overruled.

Witness: I have not. No. 7 of these instructions specifically states, "No one has authority to change these instructions except upon specific written authority from your Headquarters."

Mr. Perkel: Have you ever received any authority in writing other than that which you hold in your hand?

A. No, sir, I have not.

Mr. Perkel: No further questions.

The Court: Mr. McRight?

Recross-examination by Mr. McRight:

Q. Mr. Neira, you call the shots in the—in Mobile insofar as SIU is concerned, don't you? A. I am the Administrator in charge of the Port of Mobile as far as its policies are carried out.

Q. So far as day to day operation of the Port and as far as SIU is concerned, are you in charge of and responsible for that organizing? A. Yes, sir, I am.

Q. All right. And this applies to the pickets, as well as other items that the SIU is involved in? A. Only when

I get different instructions; then I go by whatever instructions I'm given.

Q. Well, as to the Port of Mobile though, you call the shots as far as SIU pickets are concerned, don't you? A. I don't quite understand your question. You say, "You call the (135) shots about the picket line—"

Q. Yes, sir. A. What are you getting at?

Q. Well, the pickets— A. Are we talking about this beef, or—

Q. Yes, sir, this beef. A. Well, I've already answered the question. I haven't got the authority other than I put pickets out on the picket lines in cooperation and in conjuction with the people that work with me.

Q. You gave them instructions? A. Right.

Q. And you gave them instructions? A. Yes.

Q. Now, when you told your pickets to ask people not to patronize these ships—

> Mr. Perkel: Objection; the testimony is to the contrary, Your Honor. He testified that pickets did not speak to anyone.
>
> The Court: Sustained. Your question is hypothecated on a fact that I believe is not in evidence.
>
> Mr. McRight: All right. You asked your pickets, did you not, to carry a sign that said "Please do not patronize this vessel"?

A. I instructed my pickets to speak to no one, carry the picket sign, and hand out leaflets when asked a question.

Q. All right, sir. Now, when you told these pickets to carry this sign that said "Don't patronize this vessel"—

"Please do not patronize this vessel"— A. Oh, yes, very polite.

Q. —what did you mean by patronize? A. The only sense that I can understand "patronize," don't do nothing for it.

Q. Don't do any business? A. Don't do nothing.

Q. Don't do any business? A. That's right.

Q. All right. Now, do your pickets give this message to longshoremen? A. I don't know because I don't know if they read the picket sign because their instructions are not to speak to no one.

(136) Q. Well, you hope the longshoremen read the picket signs, don't you? A. I hope everybody does.

Q. Yes, sir. Including longshoremen? A. Including longshoremen. Including Mobile Steamship Association.

Q. Did you ask the longshoremen not to do business— A. I did not—

Mr. Perkel: Objection, Your Honor—

The Court: That's repetitious; sustain the objection.

Mr. McRight: That's all.

The Court: Mr. Lankford, do you have anything?

Mr. Lankford: No, sir.

The Court: You may step down, Mr. Neira.

(Witness left the stand.)

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